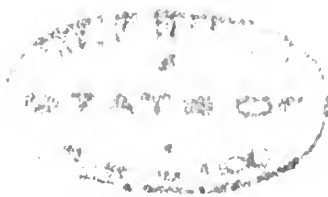




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LIABILITIES OF TRUSTEES FOR INVESTMENTS

GENERAL PRINCIPLES
STATUTES AND DECISIONS OF THE VARIOUS STATES
TYPICAL LIST OF INVESTMENTS LEGAL IN
CONNECTICUT, MASSACHUSETTS
MARYLAND AND NEW YORK

BY
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ROCHESTER, NEW YORK
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PREFACE

A careful search has revealed the fact that there is no separate treatise in the United States dealing with the subject of investments by trustees. It has seemed advisable, therefore, to prepare a volume devoted to a discussion of general principles, a compilation of the statutes of the states, and a digest of the leading decisions in each state. For the benefit of trustees and for the purpose of indicating the extent to which some of the states have gone in extending the field of investments, a list of securities which are legal in those states has also been added. Although the list may be revised slightly from time to time, the securities named are standard and are, with a few exceptions, likely to remain legal.

Lack of uniformity in the laws of the various states is notable, and the work will justify itself if it affords a present guide for the proper investment of trust funds and at the same time indicates the necessity for uniform laws on the subject and the creation of reliable sources of information for the benefit of trustees.

The need for such a book has been evident in connection with the preparation of the legal discussions for Trust Companies Magazine, and the author wishes to express his appreciation for valuable suggestions made by the editor of Trust Companies Magazine, and Mr. Orrin R. Judd, Assistant Trust Officer of the Columbia-Knickerbocker Trust Company.

59 Wall Street, New York.

May 25, 1914.

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INTRODUCTION

There is no general rule governing the investment of trust funds in the United States. The trustee must look to the statutes and decisions of his own state and must exercise his best judgment. Too frequently the laws are not specific. He is then told to act in good faith and to exercise the care and prudence which the average man would exercise in his own like affairs. But at the same time he may exercise this care and prudence in selecting only from such securities as are authorized by law. Consequently, no matter how careful and prudent he may be, he runs the risk of loss if he invests in other than legal securities.

Neither may the trustee follow the laws of another state as his guide. The fact that the State of Massachusetts permits investment of trust funds in corporate stock is no argument for the legality of such an investment in Wisconsin. The fact that New York permits a trustee to invest in certain railroad bonds is no argument that a trustee in New Mexico may follow the New York rule. An investment in securities which are legal in other states may be evidence of the good faith and diligence of the trustee, but it is not a complete defense for the legality of the investment. The general impression, therefore, that an investment which is legal in New York, or the New England states, is also legal in the western states is false, for the western states have adopted the strict old English rule more frequently than the Massachusetts rule.

A common illustration of the lack of uniformity on the subject and of the futility of attempting to formulate general rules is the diversity of statutes and decisions as to the right of a trustee to continue investments which have been made by the creator of the trust. Many well-informed trustees think that it is proper to continue investments which were made by the creator of the trust, whether such investments are legal for trustees or not. In some of the states this is the law; but in others it is the duty of the trustee to call in so much of

the estate as is not invested in authorized securities and convert it into investments which are legal. The states which permit the trustee to continue investments do so on the theory that the creator of the trust intended his own selections to remain. On the other hand, the states which require the trustee to call in the estate do so on the theory that in selecting the trustee the creator of the trust placed special confidence in him and, in the absence of specific authorization, intended that he should execute the trust in accordance with the law governing investments.

It is evident, therefore, that a trustee must look to the laws of his own state in deciding upon proper investments. But the discussion of general principles, which precedes the statement of the statutes and decisions of the various states, will be found helpful where a state has not provided definite rules for the guidance of trustees.

We mention briefly the law of England relating to investments of trust funds, because the rules which have been adopted by the various states have as their basis the principles which were worked out by the English courts of equity, and because England has adopted a uniform law governing the investment of trust funds. At one time the English courts were liberal in their treatment of trustees, permitting them to invest even in personal securities where it was shown that the trustee had exercised due diligence. But later the rules were restricted and it was even doubted whether a trustee could safely invest in mortgage security. Finally, in a leading case, Sir George Jessel said that, "A trustee ought to conduct the business of the trust in the same manner that an ordinary prudent man of business would conduct his own." This was the general rule, and in the application of this rule the courts restricted the trustee, in his choice of investments, to government securities and first mortgages on real estate.

At last the English Trust Investment Act of 1889 was passed, prescribing definitely the securities in which a trustee might lawfully invest. With but few changes, made to suit changed conditions, the act remains. The second reason, then, for discussing briefly the English law is that it indicates how

effectively that country has provided a simple rule for trustees to follow. Instead of uncertainty—the kind of uncertainty which exists in many of our states—there is a well-defined guide. A list of investments, sufficiently extensive and yet safe, allowing the trustee plenty of latitude, has been authorized by the Trust Investment Act of England. The trustee is not compelled to guess at the value of the security or to take another's word for it. His problem has been simplified.

It is unnecessary to set forth the English act in detail, but it provides for investment in parliamentary stocks or public funds; real or inheritable securities in Great Britain or Ireland; stock of the Bank of England or of the Bank of Ireland; India stock; any securities, the interest of which has been guaranteed by Parliament; consolidated stocks created by the Metropolitan Board of Works, or debenture stocks created by the Receiver for the Metropolitan Public District, and certain railway stocks in Great Britain, Ireland and India. Definite qualifications which a railroad must possess before its stock can be considered as an investment suitable for trustees are stated in the statute. Provision is also made for investment in certain municipal stock and the stock of certain city water supply companies.

A few of the states have provided for investments by trustees in a similar definite form, and have permitted investments in railroad bonds, provided the road has fulfilled certain requirements as to financial condition. This is a step in the right direction, and to be perfect needs but the addition of a reliable source of information regarding the roads which fulfill the requirements of the statute. It is evident that if a uniform law for investment of trust funds were passed for all of the states, it would not only be progressive legislation, but would be a recognition of reforms which, for twenty-five years, have proved beneficial to the large number of trustees in England. Surely, if reference to the English law on the subject does no more than stimulate thought it will have justified this brief reference to it in a book which is to set forth the laws governing the investment of trust funds in the United States.

PART I.

GENERAL PRINCIPLES.

1. Necessity of Stating General Rules.

Because of the lack of uniformity among the various states as to investments which are legal for trustees, and because many states have not formulated definite rules governing trustees in their investments, it is necessary to set forth, as accurately as may be, the investments which have been generally recognized as legal for trustees and the principles which have usually been applied to such investments. Some of the states, either by statutes or court decisions, have established rules for the investment of trust funds which are fairly definite; others have gone little further than to provide that the trustee must exercise the care and prudence of the average person, and still others have said nothing about the character of investments which a trustee may make. But this does not mean that in the states where the law is unsettled, the trustee may invest trust funds as he pleases. It does not mean that in the states which merely prescribe the rule of "good faith," the trustee may frame his own definition of "good faith." In such states, it is important, therefore, that the trustee keep well within the classes of investments which have been generally recognized as legal. Both in England and the United States, the courts have agreed upon certain investments which, when honestly made, relieve the trustee from liability for loss. When in doubt, he should follow these rules, although they are not as liberal as one would desire in this day of increased opportunity for safe investments.

2. Continuing Investments made by Creator of Trust.

The first duty of a trustee is to call in the estate preparatory to investment. The extent to which he must go in call-

ing in the estate and converting it into investments which are legal, depends upon the provisions of the trust instrument, and the law of the state in which he acts. The instrument itself may authorize him to continue the investments made by the creator of the trust, or the law of the state may authorize a continuance of such investments. In the absence of one or the other of such provisions, it is the duty of the trustee to call in the estate and convert investments which are not legal for trustees into investments which are legal. In the absence of specific authority, he cannot safely continue an investment simply because it was made by the creator of the trust.

The authorities are divided upon the question. Of the few states in which it has been definitely determined, the right to continue investments is recognized in Massachusetts,¹ Connecticut,² New Jersey,³ Kentucky,⁴ Illinois,⁵ New Hampshire,⁶ and apparently in Delaware.⁷

But the following states have decided that the investments made by the creator of the trust afford no criterion for the trustee, and that it is his duty to call in the estate and invest in authorized securities: New York,⁸ Pennsylvania,⁹ Ohio,¹⁰ South Carolina,¹¹ Virginia,¹² and West Virginia.¹³

It is evident that in states where there are no statutes or decisions upon the question, the only safe course for the trustee is to call in the estate and invest it in legal securities.

¹ *Harvard College v. Amory*, 26 Mass. 446.

² General Statutes, Secs. 255, 496. *State v. Washburn*, 67 Conn. 187.

³ Statutes, 1910, Sec. 34.

⁴ *Fidelity Trust Co. v. Glover*, 90 Ky. 355.

⁵ Laws of 1905. *Merchants Loan & Trust Co. v. Northern Trust Co.*, 250 Ill. 86.

⁶ Laws of 1907, ch. 16.

⁷ Statutes 1895.

⁸ *Matter of Meyers*, 131 N. Y. 409; *Matter of Hirsch's Estate*, 116 A. D. 367; *Aff'd.* 188 N. Y. 584; *Cannon v. Quincy*, 65 Misc. 399.

⁹ *Skeer's Estate*, 236 Pa. St. 404; *Bartol's Estate*, 182 Pa. St. 407.

¹⁰ *Weyer v. Watt*, 48 O. S. 545.

¹¹ *Nance v. Nance*, 1 S. C. 218; *Spear v. Spear*, 9 Rich Eq. 184.

¹² *Miller v. Holcomb's Ex'r.*, 50 Va. 674, but the rule is modified in *Patterson v. Horsley*, 70 Va. 263 and *Walkins v. Stewart*, 78 Va. 111.

¹³ *Anderson v. Piercy*, 20 W. Va. 282.

There is authority, however, for the rule that in states where there are no fixed funds or securities in which trustees shall invest, "the fact that a testator has invested his property in particular stocks, shares of corporations, mortgages, or other securities, thus indicating his confidence in such investments, will go far to justify the trustees in continuing them."¹

3. Duty to Invest.

A trustee may not permit the funds to lie idle. The rule is well settled that he must invest within a reasonable time and must keep the funds productive. This rule applies also to any interest or increase which comes to the estate. By negligently permitting the fund to remain idle the trustee renders himself liable for interest at the legal rate.

4. Must Obey Directions in Trust Instrument.

A trustee is bound to follow strictly the provisions of the trust instrument. If the creator of the trust specifies the character of investments to be made and the security to be taken, his instructions must be followed, no matter what the law may recognize as legal investments. He may direct the trustee to continue a business or to invest without security of any kind.

5. Wording of Trust Instrument.

The instrument creating the trust frequently provides that the funds may be invested by the trustee in accordance with his "best judgment" or "within his discretion," or as he shall deem for the "best interests of the estate," or in "good and safe security." The courts have generally decided that the use of such terms does not give the trustee authority to invest in unauthorized securities. Generally, these and like terms have been construed to mean that the trustee may ex-

¹Perry on Trusts, Sec. 465. Norwood, Admr., v. Harness, 93 Ind. 134.

ercise his judgment or discretion in selecting investments from those which are recognized as legal.

Only by clear and specific instructions in the trust instrument, and not in general terms, can a trustee be justified in investing in other than legal securities.

6. Must Exercise Ordinary Care and Prudence.

The most common rule found in the decisions is that a trustee, in making investments, must exercise good faith and must use the care and prudence of ordinary men of affairs. This sounds easy, but it is not. The rule has been defined and limited in so many ways that a trustee cannot be safely governed by his own understanding of "care and prudence." For instance, he might very well believe that an investment in certain corporate bonds would be an exercise of the greatest care and prudence, but the courts in many states have refused to permit such investment of trust funds. Such terms as "care and prudence" and "good faith" do not apply to investments generally, but merely to the selection by a trustee from the securities which are legal.

If, after exercising ordinary care, he selects an authorized investment upon which there is ultimately a loss to the estate, he is not liable. But even if he has exercised ordinary care and prudence in selecting an unauthorized investment, he is not protected against loss.

7. Disposition of Funds Pending Investment.

A trustee is allowed a reasonable time within which to invest the funds, before he is chargeable with interest. What constitutes a reasonable time depends on the circumstances of each case and the availability of legal securities. Generally speaking, a trustee should not permit a fund to remain uninvested for a longer period than six months. But in Virginia and West Virginia a guardian must invest within thirty days.

Pending investment a trustee may deposit the funds in a bank of good standing in his name as trustee.

8. Trustee may not Profit from the Estate.

It is well settled that a trustee may not obtain any personal benefit either directly or indirectly from his dealings with the trust property. He is entitled to lawful commissions and to compensation for his services, but this is all he should be allowed. So strictly has this rule been applied that the courts have generally decided that a trustee may not purchase, either directly or indirectly, at a sale of the trust property, and may not represent those whose interests are adverse to the beneficiaries. It is evident, therefore, that the only safe policy for a trustee is to have no personal interest whatever in his dealings with the trust funds.

9. Trust Funds must be Kept Separate.

Since the trustee must have no personal interest whatever in his dealings with the trust property, it follows that if he would pursue a safe course he must keep the trust funds entirely separate from his own money, and if he acts as trustee for more than one estate, must keep each fund intact and not invested in common with the others. Occasionally there has been an exception where the trustee of a number of small funds has combined them in order to obtain one good mortgage. And there seems to have been no criticism of the practice of trust companies in providing for investment of small funds in participating mortgages. In fact, at least one state¹ has provided by statute for this form of investment.

10. Effect of Consent of Adult Beneficiary.

It happens occasionally that all of the beneficiaries of a trust are of full age and under no legal disabilities. Where this is the case, the trustee may invest in other than legal securities, provided he obtains the consent of all the beneficiaries. While it is true that the beneficiaries may not combine to destroy the trust estate or defeat the will of the creator of the trust, still they are the only ones who may

¹ Ohio. Sec. 9788 of the Code.

complain of a loss due to improper investment, and if they agree upon the investment, they have waived the right to hold the trustee responsible for loss. But before such an investment is made, the trustee should obtain the written consent of the beneficiaries.

In order to bind a beneficiary by acquiescence in an unauthorized investment, it must appear that he knew all the facts, and was apprised of his legal rights, and was under no disability to assert them. The beneficiary must have acted freely, deliberately and advisedly, with the intention of confirming a transaction which he knew, or with reasonable diligence ought to have known, to be impeachable. His acquiescence amounts to nothing if a free disclosure of every circumstance is not made to him, or if his right to impeach the investment is concealed from him. The trustee sustains the burden of proof and he must show that all the beneficiaries are competent to acquiesce, and that all have consented. Imperfect information amounts to concealment. (*White v. Sherman*, 168 Ill. 589.)

11. Vigilance of Trustee Between Time of Examining Title to Property and Making a Loan upon it as Security.

It has sometimes happened that a trustee, before making a loan of trust funds upon property, has had the title examined for encumbrances a few days prior to making the loan and that during the intervening time a fraudulent borrower has encumbered the land. In such a case, to what extent is the trustee guilty of negligence?

In *Slauter v. Favorite*, 107 Ind. 291, a guardian had allowed ten days to elapse between the time of examining the title and the time of making the loan. In the meantime, the mortgagor had encumbered the property. The court decided that the trustee acted in good faith and was not guilty of negligence; that a lender cannot always be said to be negligent if he does not watch the records to the last day or hour on which negotiations are closed.

It is evident that the case was decided upon the broad rule that a trustee who has exercised good faith should be

protected. While negotiations for loans may often be in progress for several days before they are concluded, this is no excuse for failure of a trustee to protect the estate. We doubt, therefore, the soundness of the rule in the *Indiana* case and are convinced that although a trustee may not be able to examine a title down to the last minute before making a loan, he can at least take such precaution that the borrower has little opportunity to perpetrate a fraud. A delay of ten days after examining title could not generally be considered the exercise of due diligence.

12. Participating Mortgages.

A general practice among trust companies is to invest a number of small trust estates in a common mortgage and to issue participating certificates to the various beneficiaries. This method of investment is not only safe, but it is also exceedingly advantageous to the beneficiary of a small fund. In New York City, for example, where real estate values are high, it is often well-nigh impossible for a trustee to invest safely a small estate in a mortgage. The result is that if he is bound by the strict rule that each trust fund must be kept entirely separate from every other fund,¹ he may be put to great inconvenience and many small estates may remain unproductive for long periods of time. In answer to this it may be said that the trustee is bound to exercise due diligence in obtaining proper securities; but it must also be remembered that he is allowed a reasonable time within which to obtain such securities, and that eighteen months has been held not to be an unreasonable time. Under the practice adopted by trust companies these small estates are invested at once and are kept continually productive.

Although this particular method of investment does not appear to have been passed upon by the courts, it is reasonably safe to say that if the question arises the practice will

¹ *Doud v. Holmes*, 63 N. Y. 635; *McCullough v. McCullough*, 44 N. J. Eq. 313; *Lewin on Trusts*, Vol. I, p. 331; *Perry on Trusts*, Vol. I, Sec. 463.

be sustained. One case, at least, has gone so far as to protect a trustee who mingled a small trust fund with his own funds in order to obtain a good mortgage.¹

In another case a guardian was permitted to make a loan on the joint account of two wards.²

It is suggested that this highly desirable method of dealing with trust funds be settled beyond the peradventure of a doubt by a statute giving trust companies the power to invest a number of trust estates in a single mortgage, where such an investment would be to the best interests of the estate. Such a statute exists in Ohio³ and California.⁴

INVESTMENTS LEGAL IN ALL STATES

It has been aptly stated that, "the trustee has not, in this country, the advantage of a precise standing rule, which has been long since adopted by the English Courts, indicating particular securities as safe ones, in the choice of which the trustee will be protected against loss." (Kimball v. Reding, 31 N. H. 352, 374.)

But there are certain classes of investments recognized as legal in all of the states, and as long as a trustee exercises common intelligence and deals honestly, he is protected from loss when he invests the funds in these securities. When the trust instrument does not direct the securities in which the funds may be invested and when there are neither state statutes nor court decisions to guide a trustee, his safest plan

¹ Graves' Appeal, 50 Pa. St. 189.

² Nance v. Nance, 1 S. C. 209.

³ Sec. 9788 of the Ohio Code provides:

"In the management of money and property held by it as trustee, under the power conferred in the foregoing sections, such trust company may invest them in a general trust fund of the corporation. But the authority making the appointment, upon conferring it, may direct whether such money and property shall be held separately or invested in a general trust fund of the corporation; except that such corporation shall follow and be governed by all directions contained in any instrument under which it acts."

⁴ Savings Bank Law, Sec. 67.

is to invest in some of the following securities which are universally recognized as legal for trustees:

1. Public Securities.

United States bonds and state and county bonds of the state where the trust is created are legal investments for trust funds in all jurisdictions. The difficulty is that these bonds pay a low rate of interest and are not always readily obtainable. As a general rule a trustee may invest in bonds issued by other states, but there are a few exceptions.

2. First Mortgages on Real Estate.

Although there was some doubt in the early English decisions, it is now the universal rule that a trustee may invest in first mortgages on unencumbered real property. He must see that the title to the property is good; that the property is located in the state where the trust is to be administered; that the mortgage is a first lien upon the property; that a fair appraisal of the value of the property has been made, and that the amount invested does not exceed sixty-six and two thirds per centum of the appraised value. Some of the authorities make a distinction between "improved" and "unimproved" property and require that a trustee may not invest an amount in unimproved property which shall exceed from forty to fifty per centum of its fair value. This distinction should be observed, for improved property is more desirable as an investment than unimproved or vacant land. But in neither case have the courts been strict in figuring exact percentages, provided the trustee has exercised good faith and approximated the "sixty-six and two-thirds per cent rule." In other words, a trustee is allowed considerable latitude in selecting such an investment, for the courts have not agreed upon a definite percentage, the "sixty-six and two-thirds per cent" rule being statutory in some states and not in others. It can be accepted, however, as a fairly uniform standard. It should be added that although a mortgage on unimproved property is a legal investment, it is not generally considered advisable, unless the land is actually producing an income.

INVESTMENTS NOT LEGAL IN ALL STATES.

1. Municipal Bonds.

Perhaps it is hardly accurate to classify municipal bonds under investments which are not generally considered legal, for most of the states, as we shall see later, have specifically authorized such investments and when municipal bonds are legally issued they are practically as safe as public securities. It is also true that if a trustee, in the exercise of good faith, invests in apparently safe municipal bonds the courts will generally protect him against loss. But even so, in drawing a dividing line between investments which are unquestionably legal in all of the states and those which may or may not be legal, it is necessary to classify municipal bonds under the latter.

2. Corporate Bonds.

The question of the right of a trustee to invest in corporate bonds is likewise not easily answered. In the first place, many of the states, recognizing the safety of the first mortgage bonds of standard corporations, have provided by statute for investment of trusts funds in such security.¹

In the second place, the first mortgage bonds of long established corporations are becoming more and more desirable as investments. This is especially true in the large cities where it is frequently difficult for a trustee to place a small fund in first mortgages on real estate. Moreover, the states which follow the "good faith" rule and which have not expressly provided for such investments by statute would probably protect a trustee who selected the first mortgage bonds

¹ California, Code of 1909, Art. V, Sec. 105; Connecticut, Statutes of 1905; Colorado, Statutes of 1891, Sec. 36; Delaware, Laws of 1909; Illinois, Laws of 1905; Kentucky, Statutes of 1909, Sec. 4168; Louisiana, Statutes of 1904, Sec. 8 of Savings Bank Law; Massachusetts, by implication, Sec. 17 of Trust Company Law; Minnesota, Statutes, Sec. 6393; New Hampshire, Laws of 1907, ch. 15 Sec. 1 and ch. 114 Sec. 1; New York Savings Bank Law, Sec. 239; New Jersey, Statutes 1910, Savings Bank Law, Sec. 33; Tennessee, Statutes of 1903, ch. 377; Vermont, Statutes, Sec. 4654; Wisconsin, Laws of 1909, ch. 462.

of a leading railroad corporation. And yet, corporate bonds must be classified as investments not legal in all of the states. In fact, two states,¹ by their constitutions, prohibit investments by trustees in stocks and bonds of private corporations.

Naturally, the states which permit a trustee to continue the investments made by the creator of the trust, would permit him to retain stocks and bonds of private corporations; but this exception applies to all the general rules herein stated, to the same extent as the exception that no matter what the legal requirements, a trustee is bound by the provisions of the trust instrument or an order of court.

3. Corporate Stock.

There can be no question regarding the general rule governing investments by trustees in corporate stock. With a few exceptions,² notably Massachusetts, none of the states permit trustees to invest trust funds in the stock of private corporations. And even where an exception is made, the trustee is not permitted to invest too large a portion of the estate in such security.³

It is also true that where the trustee is given wide discretion by the trust instrument, he may be permitted to invest in corporate stock,⁴ but the general rule is that stocks of private corporations are not legal investments for trust funds.⁵

¹ Pennsylvania and Colorado.

² *Harvard College v. Amory*, 26 Mass. 446; *Green v. Crapo*, 181 Mass. 55; *Sheffield v. Parker*, 153 Mass. 330; *Seoville v. Brock*, 81 Vt. 405; *McCoy v. Horwitz*, 62 Md. 183.

³ *Appeal of Dickinson*, 152 Mass. 184.

⁴ *Willis v. Braucher*, 79 O. St. 290.

⁵ *In re Potter's Appeal*, 56 Conn. 1; *Reed v. Reed*, 80 Conn. 401; *Tucker v. State*, 72 Ind. 242; *Gilbert v. Welsch*, 75 Ind. 557; *Mattocks v. Moulton*, 84 Me. 545; *Cropsey v. Johnston*, 137 Mich. 16; *Estate of Millenovich*, 5 Nev. 161; *Kimball v. Reding*, 31 N. H. 352; *Stevens v. Meserve*, 73 N. H. 293; *Gray v. Fox*, 1 N. J. Eq. 259; *Ward v. Kitchen*, 30 N. J. Eq. 31; *King v. Talbot*, 40 N. Y. 76; *Matter of Hall*, 164 N. Y. 196; *Roach's Estate*, 50 Oregon 179; *Commonwealth v. McConnell*, 226 Pa. 244; *Allen v. Gaillard*, 1 S. C. 279; *Womack v. Austin*, 1 S. C. 421.

4. Personal Securities.

Although in a few exceptional cases, trustees who invested the trust funds by lending to individuals without additional security, have been protected, the exceptions are so rare that they are negligible. In the absence of specific authorization in the trust instrument, a trustee should never lend the funds upon mere personal security. If he does so, he may expect to bear whatever loss results to the estate, not to mention the possibility of more serious consequences. And this is the rule, no matter what the financial standing of the borrower at the time the loan was made.

5. Second Mortgages.

The decisions which approve the investment of trust funds in a second mortgage are rare indeed. One leading case¹ seems to have sanctioned such an investment, but the rule is well-nigh universal that a trustee who invests in a second mortgage is liable for any loss to the estate.²

6. Investment in Securities in other States.

The general rule is that a trustee must invest in securities which are located in the state where the trust is to be administered. The reason given for the rule is that the courts which must enforce the trust should have jurisdiction over the subject of the trust. But there are exceptions, some of the states permitting trustees to invest in a limited way in other states³ and others allowing the practice in particular cases.⁴

¹ Taft v. Smith, 186 Mass. 31.

² Mattocks v. Moulton, 84 Me. 545; Gilbert v. Kolb, 85 Md. 627; Gilmore v. Tuttle, 32 N. J. Eq. 611; Mulford v. Mulford, 53 Atl. Rep. 79; Shuey v. Latta, 90 Ind. 136; Makin's Estate, 20 Pa. C. C. 587; In re Spencer's Appeal, 2 O. Dec. Rep. 510.

³ Laws of Massachusetts, 1910 ch. 411 Sec. 14; Statutes of New Hampshire, 1907 ch. 114 Sec. 1; Laws of Illinois, 1905.

⁴ Denton v. Sanford, 103 N. Y. 607; Ridley v. Dedman, 134 Ky. 146, where it was to the advantage of the beneficiary; Thayer v. Dewey, 185 Mass. 68, where the fund came to the trustee so invested; Stevens v. Meserve, 73 N. H. 293; Gouldley's Estate, 201 Pa. St. 491, where the

But the weight of authority is against the right of a trustee to go beyond his own state to secure investments.¹

In the absence, therefore, of specific authority, either in the trust instrument or by statute, a trustee would not be safe in placing the trust funds in securities which are beyond the jurisdiction of the court. Naturally, this rule does not apply where the statutes of a state permit investments in railroad bonds and bonds of municipalities in other states.

7. Purchasing Real Estate.

A trustee has no power, unless authorized by the instrument creating the trust, to purchase land with the trust fund unless it is necessary for the protection of the beneficiaries. And even then, the only safe course is to obtain an order of court authorizing the purchase. In one of the leading cases, where the estate owned an undivided half interest in land, the court went so far as to say that it was the duty of the trustee to purchase the other half and thus protect the estate. (*Pine v. White*, 175 Mass. 585.)

Where it is necessary for a trustee to buy in at a mortgage foreclosure, this is not considered a purchase of property with trust funds. In such a case the land taken becomes in effect personal property and may be accounted for as such.

8. Certificates of Deposit.

Although a trustee may deposit trust funds in a reputable bank for a reasonable time while he is securing legal investments, the general rule seems to be that he may not invest the funds in certificates of deposit. The average trustee is likely to think that he may keep the fund on deposit in a savings bank where it draws a fairly good rate of interest.

court allowed a Pennsylvania trustee to invest in Camden, New Jersey. But this was because of the proximity of Camden. The rule would not be extended. *Robert's Estate*, 22 Pa. C. C. 4; *Rush's Estate*, 12 Pa. St. 375.

¹In *re Potter's Appeal*, 56 Conn. 1; *Clark v. Beers*, 61 Conn. 87; *McCullough v. McCullough*, 44 N. J. Eq. 313; *Collins v. Gooch*, 97 N. C. 186; *Pabst v. Goodrich*, 133 Wis. 43; *Ormiston v. Oleott*, 84 N. Y. 339.

But deposits, whether made in a savings bank, trust company, or bank, are not proper as a permanent investment.¹

There are a few contrary cases. For example, it has been decided that a trustee may invest in the certificate of deposit of a national bank,² and that a trust company may make a deposit in its savings department,³ although it may not invest in its own certificates of deposit.⁴ The case of *Twittz v. Houser*,⁵ seems to permit a trustee to deposit in a savings bank as an investment.

9. Trade or Business—Continuing Business.

The rule is well settled in all of the states that a trustee may not invest trust funds in a trade or business. Such an investment would be mere speculation, and the law is strict in prohibiting the use of trust funds in a business chance which may fail. Even Massachusetts, where the laws governing the investments of trust funds are liberal, does not approve of such investments. (*Trull v. Trull*, 95 Mass. 407.) And although a few of the states permit a trustee to continue the investments made by the creator of the trust, whether they are authorized or not, none of the states permit a trustee to continue a business, unless there is specific authority in the trust instrument so to do.

In the absence of such authority or an order of court, it is the duty of a trustee to close out a business within a reasonable time and invest the proceeds in legal securities.

Many a trustee has fallen into error in attempting to carry on the business of an estate, and has done so innocently. Where the business is prosperous, he has reasoned that since he is the representative of the estate and has taken the place

¹ *Estate of Wood*, 159 Cal. 466; *Allen v. Leach*, 7 Del. Ch. 83; *In re Gramel's Estate*, 120 Mich. 487; *Collins v. Gooch*, 97 N. C. 186; *Baer's Appeal*, 127 Pa. 360; *Frankenfield's Appeal*, 11 W. L. N. (Pa.) 373.

² *Appeal of Hunt*, 141 Mass. 515.

³ *Tucker v. New Hampshire Trust Co.*, 69 N. H. 187.

⁴ *St. Paul Trust Co. v. Kittson*, 62 Minn. 408.

⁵ 7 S. C. 164.

of the owner of the business, he should continue that which is profitable to the estate. Logical as this may appear to be, the legal situation is that the creator of the trust has placed special confidence in his trustee. Had he desired the trustee to continue the risks of business, he would have so provided in the trust instrument.

In the absence of such express authorization to continue a business or to invest in a business, the trustee is without power thus to employ the trust estate. The creator of the trust may have been a venturesome speculator, but it does not follow that his trustee may take business risks.

PART II.
STATE LAWS AND DECISIONS.

ALABAMA.

TRUSTEES GENERALLY.

Code of 1907.

(With Amendments to 1914.)

Sec. 6076. Trustees may invest in State or United States Securities.—A trustee, having moneys to invest or lend, may invest them in the purchase of the interest-bearing securities of the State, or of the United States; but for such investment his liability is governed by the general rules of the law.

Sec. 6077. Investment without the State.—If the *cestuis que trust*, or any of them, reside without the State, and the trustee has funds to lend or invest, the loan or investment whereof in the State of their residence is desirable, the trustee may there lend and invest them, under the authority of a decree of the Court of Chancery.

Secs. 4376, 4395, 4411. Investments by Guardians.—It is the duty of the guardian to manage the estate of the ward frugally, and to improve it to the best of his skill and ability. He must, if practicable, lend out all surplus money of the ward on bond and mortgage, or on good personal security, and, if the bond is not renewed annually, require the interest to be paid at the end of each year.

Guardians may invest the money of their wards in real estate situated in any part of the State; and the guardian, acting in good faith, shall not be individually responsible for a depreciation in value of the land purchased with the funds of the ward, when such depreciation may result from causes which cannot be prevented by the guardian.

The court of probate may authorize the guardian to sell any property of the ward and direct the investment of the proceeds in bonds, notes or bills of exchange at interest on mortgage security, or in other property or securities, in the name of the ward.

Note.—There seems to be an inconsistency between the statutes governing investments by trustees and the statutes providing for investments by guardians. The former are required to invest in government securities. They would also be protected if an investment were made in first mortgages on real estate in accordance with the general rule. The latter, it seems, may invest in personal security. But guardians are subject to the directions of the probate court, and it is evidently the intention of the statute that their investments be made accordingly. Perhaps this accounts for the apparent inconsistency. In any case, the safe policy for the trustee is to invest in government securities or first mortgages on real estate.

Must Take Title in Name of Beneficiary.

A guardian may invest the funds of his ward in real estate, as the statute provides, but the title must be taken in name of the ward. *Robinson v. Pebworth*, 71 Ala. 240. And the guardian is liable if he takes property with a defective title. *Scott v. Reeves*, 131 Ala. 612.

Trustee May Not Deal With Trust Property For His Own Benefit.

The trustee is not permitted to traffic for his own benefit in property which he holds in trust; and if he does so the beneficiary may claim the profit. *Hughes v. Hughes*, 87 Ala. 652; *Penny v. Jackson*, 85 Ala. 67; *Pearce v. Gamble*, 72 Ala. 341; *James v. James*, 55 Ala. 525.

He may not loan to himself on note and mortgage and he must not mingle trust funds with his own. *De Jarnette v. De Jarnette*, 41 Ala. 708.

Purchase by Trustee at Sale.

A purchase of trust property by a trustee at his own sale is voidable at the option of the beneficiary, but executors and administrators who have an interest in the property sold may purchase at a sale of the estate provided there is no unfairness. *Bank of Wetumpka v. Walkley*, 169 Ala. 648.

Carrying on Business of Testator.

A trustee has no authority to carry on the business of the creator of the trust unless the power to do so is expressly given by the trust instrument. *National Bank v. Manassas*, 124 Ala. 379.

ALASKA.

Code.

Sec. 866. Executors and Administrators.—This section provides that executors and administrators shall not make any profit by the increase in value of the estate, or suffer loss by the decrease in value, without their fault. They shall not purchase any claim against the estate.

Guardians.—Guardians are subject to the supervision of the Commissioners, and must invest the funds of the ward in real estate or in such securities as the Commissioner directs. Code, Sec. 905.

Deposit in Bank.—A guardian who deposits the funds of the ward in a reputable bank pending investment is not liable for loss, but if he deposits the fund for a fixed time and accepts a certificate of deposit, this amounts to an investment and he is personally responsible. *Corcoran v. Kostrometinoff*, 164 Fed. 685.

Order of Court.—An order of court will protect a guardian in his investments. So held where a guardian deposited funds in a bank under an order of court. *In re Guardianship of Corcoran*, 3 Alaska 263.

Trustee may not Obtain Personal Advantage.—A trustee may not obtain any personal advantage in his management of the estate. *Moore v. Moore*, 1 Alaska 225.

ARIZONA.

There are no statutes or decisions by the higher courts governing investments by trustees. Sections 1990, 1998 and 2000, of the Revised Statutes, relating to guardians, provide that a guardian must manage the estate of his ward "frugally and without waste." When it seems advisable to sell property of the ward and invest the proceeds, this may be done, provided a court order is obtained. When a sale is made, the guardian "must make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court."

A trustee who would invest safely, therefore, is limited by the general rules stated in Part I.

ARKANSAS.

Kirby's Statutes of 1904.
(With Amendments to 1914.)

Sec. 103. Executors and Administrators.—If, on the return of any inventory, or at any other time, it shall appear to the satisfaction of the court that there is a surplus of money in the hands of any executor or administrator that will not shortly be required for the expenses of administration or the payment of debts, such court shall have discretionary power to order the executor or administrator to lend out such money on such time and on such security as may be approved by the court.

Sec. 104. All interest received by executors and administrators shall be assets in their hands; and if they lend the money of the deceased, or use it for their private purposes, they shall be chargeable with interest thereon for the use of the estate.

Secs. 3804-3806. Guardians.—If at any time any guardian shall have on hand any money belonging to his ward, beyond what may be necessary for his education and maintenance, such guardian shall, under the direction of the court, loan the same to such person as will give security therefor, and such money shall be loaned on such time as the court shall direct.

If any guardian fail to loan the money of his ward on hand, as aforesaid, under the provisions of this act, he shall be accountable for the interest thereon.

Guardians and curators shall loan the money of their wards at the highest rate of interest prevailing in the community that can be obtained on unencumbered real estate security, and then not more than to the extent of one-half of the value thereof. The interest in all cases shall be paid annually, and

if not then paid shall become a part of the principal and bear interest at the same rate.

Trustee May Not Deal With Trust Property For His Own Benefit.

The courts look with disfavor upon transactions in which the trustee deals personally with the estate. Such transactions will not be upheld unless it clearly appears that the beneficiary was fully informed as to the value of the property and the nature of his interests. The burden is upon the trustee to show good faith. The trustee cannot directly or indirectly purchase for his own benefit. *Cornish v. Johns*, 74 Ark. 231; *McNeil v. Gates*, 41 Ark. 264; *Haynes v. Montgomery*, 96 Ark. 573.

CALIFORNIA.

TRUSTEES GENERALLY.

Code of 1906.

(With Amendments to 1914.)

Sec. 2258. Trustees Must Obey Declaration of Trust.—A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employee.

Sec. 2259. Diligence in Execution of Trust.—A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

Sec. 2261. Investment of Money by Trustee.—A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

Sec. 2262. Interest, Simple or Compound, and Omission to Invest Trust Moneys.—If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.

Sec. 2228. Trustee's Obligation to Act in Good Faith.—In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.

Sec. 2229. Trustee Not to Use Property for His Own Profit.—A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust in any manner.

Sec. 2230. Certain Transactions Forbidden.—Neither a trustee nor any of his agents may take part in any transaction

concerning the trust in which he or anyone for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

(1) When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;

(2) When the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or,

(3) When some of the beneficiaries having capacity to contract and some not having it, the former grant permission for themselves, and the proper court for the latter, in the manner above prescribed.

Sec. 2236. Trustee Mingling Trust Property with His Own.—A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events, and for the value of its use.

TRUST COMPANIES.

Code of 1909.

Banking Law, Chapter 76.

(With Amendments to 1914.)

Sec. 105. Every trust company shall, except as otherwise provided by law, invest its capital and surplus and any trust funds received by it in connection with its trust business, in accordance with the laws relative to the investment or loan of funds deposited with savings banks, unless a specific agreement to the contrary is made between the trust company and the party creating the trust, or unless it is otherwise ordered by the court, in connection with any court trust.

SAVINGS BANKS.

Sec. 61. Any savings bank may purchase, hold and convey real or personal property as follows:

1. The lot and building in which the business of the bank

is carried on; furniture and fixtures, vaults and safe deposit vaults and boxes necessary or proper to carry on its banking business; such lot and building, furniture and fixtures, vaults and safe deposit vaults and boxes shall not, in the aggregate, be carried on the books of such bank as an asset to an amount exceeding its paid-up capital and surplus; and hereafter, the authority of a two-thirds vote of all of the directors shall be necessary to authorize the purchase of such lot and building, or the construction of such building.

2. Such as may have been mortgaged, pledged or conveyed to it in trust for its benefit in good faith, for money loaned in pursuance of the regular business of the corporation.

3. Such as may have been purchased at any sales under pledge, mortgage or deed of trust made for its benefit for money so loaned and such as may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon. No savings bank shall purchase, own, or sell personal property, except such as may be requisite for its immediate accommodation for the convenient transaction of its business, notes or bonds secured by trust deeds or mortgages on real estate, bonds, securities or evidences of indebtedness, public or private, gold or silver bullion and United States mint certificates of ascertained value, and evidences of debt issued by the United States. No savings bank shall purchase, own, hold or convey bonds, securities or evidences of indebtedness, public or private, except as follows:

(a) Bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest;

(b) Bonds of this state, or those for which the faith and credit of the State of California are pledged for the payment of principal and interest;

(c) Bonds of any state in the United States that has not, within five years previous to making such investment by such bank, defaulted in the payment of any part of either principal or interest;

(d) Bonds of any county, city and county, city or school district of this state; bonds of any permanent road division in

any county issued in pursuance of the provisions of article IX, chapter II, title VI, part III, of the Political Code; bonds of any sewer district, drainage district, reclamation district, protection district, or sanitary district organized under the laws of this state; and any irrigation district bonds which the law may now or hereafter authorize to be used as security for the deposit of public moneys; *provided*, that the total amount of bonds so issued by any such sewer district, drainage district, protection district, or sanitary district, does not exceed fifteen per centum of the value of the taxable property in said district as shown by the last equalized assessment roll of the county in which said district is located; *and provided, further*, that the total amount of bonds issued by any such irrigation district does not exceed sixty per centum of the aggregate market value of the lands within such district, and of the water, water rights, canals, reservoirs, reservoir sites and irrigation works owned or to be acquired or constructed with the proceeds of any of such bonds, by said district, such facts in reference to bonds of irrigation districts to be determined by a commission now or hereafter authorized by law to ascertain and report upon such facts.

(e) Bonds of any county, city and county, city or town, in any state of the United States other than the State of California, issued under authority of any law of such state, which county, city and county, city or town, had, as shown by the federal or state census next preceding such investment, a population of more than twenty thousand inhabitants; *provided, however*, that the entire bonded indebtedness of such county, city and county, city or town, including such issue of bonds, does not exceed fifteen per centum of the value of the taxable property therein as shown by its last equalized assessment roll, and *provided, further*, that such county, city and county, city or town, or the state in which it is located has not defaulted in payment of either principal or interest due upon any legally authorized bond issue within five years next preceding such investment.

(f) (1) Bonds of any railroad corporation incorporated under the laws of the State of California and operating exclusively therein, provided said corporation has had. for its fiscal

year next preceding such investment, net earnings, after payment of all maintenance charges, operating expenses and taxes sufficient to pay the interest on all of its outstanding mortgage indebtedness; or

(2) Bonds of any railroad corporation incorporated under the laws of any other state in the United States, operating at least five hundred miles of standard gauge track, exclusive of sidings; *provided*, said corporation has had for its fiscal year next preceding such investment net earnings, after the payment of all maintenance charges, operating expenses and taxes, amounting to at least one and one-half times the interest on all its outstanding mortgage indebtedness; or

(3) Bonds of any railroad corporation, the payment of which has been guaranteed, both as to principal and interest, by a railroad corporation meeting the requirements of either subdivision (1) or (2) of paragraph (f) of this section; the income of which latter corporation, together with the income of any corporation whose bonds it has guaranteed, shall have been sufficient to pay all its maintenance charges, operating expenses, taxes and interest on all its outstanding mortgage indebtedness and, in addition thereto, interest on the total outstanding mortgage indebtedness of any other corporation the payment of which it has guaranteed, for the periods specified in the respective subdivisions of this paragraph relating thereto; *provided*, that the excess of income of any corporation whose bonds have been so guaranteed, over its maintenance charges, operating expenses, taxes and interest on its outstanding mortgage indebtedness, shall not apply to or be included in determining the income so required. In determining the income of any corporation specified in paragraph (f) of subdivision three of this section, there shall be included the income of any corporation or corporations out of which it shall have been formed through consolidation or merger, and of any corporation or corporations, the entire business and income producing property of which the corporation issuing such bonds has wholly acquired. All bonds authorized for investment by paragraph (f) of subdivision three of this section must be secured by a mortgage or trust deed which is at the time of making such investment either a first mort-

gage or deed of trust, a refunding mortgage or deed of trust providing for the retirement of all prior lien mortgage debts of said corporation, or an underlying or divisional closed mortgage or trust deed of property which forms a part of the operating system of the corporation then owning said property. No savings bank shall purchase the bonds of any railroad corporation deriving less than twenty per centum of its gross receipts from passenger revenues. The term "railroad corporation," when used in paragraph (f) of subdivision three of this section, shall have the meaning defined in the "Public Utilities Act" approved December 23, 1911.

(g) Bonds of any street railroad corporation; or of any gas; water; pipe line; light; power; light and power; gas, light and power; electrical; telephone; telegraph; or telephone and telegraph corporation or of any other "public utility" incorporated under the laws of the State of California; and

(1) Operating exclusively in the State of California; *provided*, said corporation has had, for its fiscal year next preceding such investment, net earnings, after the payment of all maintenance charges, operating expenses and taxes, amounting to one and one-half times the interest on all its outstanding mortgage indebtedness; or

(2) Operating its property in part within the State of California; *provided*, said corporation has had, for each of its two fiscal years next preceding such investment, net earnings, after the payment of all maintenance charges, operating expenses and taxes, amounting to one and one-half times the interest on all of its outstanding mortgage indebtedness; or

(3) The payment of which is guaranteed, both as to principal and interest, by a public utility corporation meeting the requirements of either subdivision (1) or (2) of paragraph (g) of this section, the income of which latter corporation, together with the income of any corporation whose bonds it has guaranteed, shall have been sufficient to pay all its maintenance charges, operating expenses, taxes and interest on all its total outstanding mortgage indebtedness, and in addition thereto, interest on the total outstanding mortgage indebtedness of any other corporation the payment of which it has guaranteed, for

the period specified in the respective subdivisions of this paragraph relating thereto; *provided*, that the excess of income of any corporation whose bonds have been so guaranteed, over its maintenance charges, operating expenses, taxes and interest on its outstanding mortgage indebtedness shall not apply to or be included in determining the income so required. In determining the income of any corporation specified in paragraph (g) of subdivision three of this section, there shall be included the income of any corporation or corporations out of which it shall have been formed through consolidation or merger, and of any corporation the entire business and income producing property of which the corporation issuing such bonds has wholly acquired. All bonds authorized for investment by paragraph (g) of subdivision three of this section must be secured by a mortgage or trust deed which is at the time of making such investment; either

I. A closed first mortgage or deed of trust; or

II. A first mortgage or deed of trust containing provisions restricting the issuance of further bonds until such time as the income of said corporations shall have been at least sufficient, during the twelve months next preceding the issuance of any additional bonds, to pay all maintenance charges, operating expenses, taxes and one and one-half times the interest on all its mortgage indebtedness then outstanding and on the additional bonds then proposed to be issued; or

III. A refunding mortgage or deed of trust providing for the retirement of all prior lien mortgage debts of said corporation, and restricting the issuance of further bonds until such time as the income of said corporation shall have been at least sufficient, during the twelve months next preceding the issuance of any additional bonds, to pay all maintenance charges, operating expenses, taxes and one and one-half times the interest on all its mortgage indebtedness then outstanding, and on the additional bonds then proposed to be issued; or

IV. An underlying or divisional closed mortgage or trust deed of property which forms a part of the operating system of the corporation then owning said property. In the case of bonds secured by an underlying or divisional closed mortgage

or trust deed, the net income required by this section shall be based exclusively upon the income, maintenance charges, operating expenses, taxes and mortgage indebtedness of or against the property covered by such underlying or divisional closed mortgage or trust deed, or on the proper proportionate share of such property in the general income, maintenance charges, operating expenses, taxes and mortgage indebtedness of the corporation then owning such property; *provided, however*, that if the payment of the bonds secured by such underlying or divisional closed mortgage or trust deed shall be guaranteed or assumed by the corporation then owning the property securing the same, such bonds shall be legal investments for savings banks, if the net income of such corporation from all sources after paying all of its maintenance charges, operating expenses, taxes and mortgage indebtedness shall equal the amount herein required, notwithstanding any insufficiency of the income derived from the property covered by such underlying or divisional closed mortgage or trust deed to meet the requirements of this section.

The terms "street railroad corporation," "pipe line corporation," "gas corporation," "electrical corporation," "telephone corporation," "telegraph corporation," "water corporation," and "public utility," when used in paragraph (g) of subdivision three of this section, shall each have the meaning defined in the "Public Utilities Act" approved December 23, 1911.

(h) Notes or bonds secured by first mortgage or deed of trust or other first lien upon real estate, improved or unimproved; *provided*, that the entire note or bond issue shall not exceed sixty per centum of the market value of such real estate, or such real estate with improvements, taken as security; *and provided, further*, in case the said note or bond issue is created for a building loan on real estate, that at no time shall the entire outstanding note or bond issue exceed sixty per centum of the market value of the real estate and the actual cost of the improvements thereon taken as security.

(i) Collateral trust bonds or notes when secured by either:

(1) Deposit of bonds authorized for investment by this sec-

tion, of a market value at least fifteen per centum in excess of the par value of the collateral trust bonds or notes issued; or

(2) Deposit of bonds authorized for investment by this section, and other securities, of a combined market value at least twenty per centum in excess of the par value of the collateral trust bonds or notes issued; *provided*, that the par value of said collateral trust bonds or notes shall in no case exceed the market value of that portion of the security represented by bonds authorized for investment by this section.

(j) Bonds legal for investment by savings banks in the states of New York or Massachusetts; *provided, however*, that as to bonds of the character specified in paragraph (c) or (e) of subdivision three of this section, such bonds shall also conform to the requirements of either of such paragraphs.

(k) Certificates issued by a corporation organized under the laws of this state with a paid-up capital stock of not less than one hundred thousand dollars, evidencing and conferring participation to an indicated amount in a first mortgage on real estate and the debt secured thereby, and guaranteeing the payment of the principal of the mortgage debt at its maturity or within some specified time thereafter and agreeing to pay interest on the amount of the participation at some specified rate, the mortgage however and debt thereby secured to be assigned to a trust company and held by it as security for the payment of said mortgage certificates and for the performance of all conditions imposed thereby upon the corporation issuing the same, provided the said first mortgage indebtedness shall not exceed sixty per centum of the market value of the real estate taken as security and provided further that the trust company shall certify on each certificate that the aggregate amount of the certificates issued evidencing and conferring participation in any one such mortgage and mortgage debt does not exceed the principal of the said mortgage debt; but provided, nevertheless, that, unless such certificates are made legal investment for savings banks by other law of this state, no savings bank shall purchase any such certificates until the corporation issuing the same has first obtained the written approval of the superintendent of banks to such certificates as an investment for

savings banks. The actual expense of investigating any issue of such certificates presented to the superintendent of banks for approval shall be paid by the corporation presenting the same, and the superintendent of banks, before making such investigation, may require a cash deposit of such amount as he may deem necessary to cover such expense. The superintendent of banks may accept and act upon the opinions and appraisements of any title insurance or abstract company, attorneys or appraisers which may be presented by such corporation so applying and the reports of any of the executive officers of the corporation issuing such certificates, on any question of fact concerning or affecting such certificates, the security thereof, or the financial condition of the corporation issuing the same. In lieu of or in addition to such opinions, appraisements and reports, the superintendent of banks may, if he deems proper, have any or all such matters passed upon and certified to him by attorneys, appraisers or accountants of his own selection at the expense of the applicant. The superintendent of banks shall keep an official list of all issues of such certificates approved by him.

No notes, bonds, or other securities, the payment of which is secured by any mortgage or deed of trust executed after September 1, 1913, shall be deemed to come within or conform to the requirements of either of paragraphs (f), (g) or (i) of subdivision three of this section, unless such notes, bonds or other securities shall, in the manner provided in this act, have been certified by the superintendent of banks, to come within and fully conform to the requirements of one or the other of said paragraphs.

The legality of investments heretofore lawfully made pursuant to the provisions of this section, or of any law of this state as it existed on and subsequent to July 1, 1909, shall not be affected by any amendments to this section or this act; nor shall any such amendments require the changing of investments once lawfully made under this act.

Any bonds authorized by this section as a legal investment for savings banks may be carried on the books of said bank at their investment value based on their market value at the time they were originally bought, unless the superintendent of banks

shall require any or all of the bonds which may thereafter have a market value less than the original investment value to be written down to such new market value, which shall be done gradually if practicable and in such manner as he may determine; or he may, by a plan of amortization to be determined by him, require such gradual extinction of premium as will bring such bonds to par at maturity.

No savings bank shall hereafter purchase or loan money upon any bond, note or other evidence of indebtedness, issued by any "public utility," subject to the jurisdiction, regulation or control of the railroad commission of this state under the provisions of the "Public Utilities Act," approved December 23, 1911, unless each such bond, note or other evidence of indebtedness was either:

(a) Issued prior to the taking effect of the "Public Utilities Act"; or

(b) Issued under authority of the railroad commission, in accordance with the provisions of said act; or

(c) A note issued for a period not exceeding twelve months, in accordance with the provisions of subdivision (b) of section fifty-two of said act.

No provision of this act, and no act, or deed, done or performed under or in connection therewith, and no finding made or certificate issued under any provision thereof, shall be held or construed to obligate the State of California to pay, or be liable for the payment of, or to guarantee in any manner whatsoever, the regularity or the validity of the issuance of any stock or bond certificate, or bond, note, or other evidence of indebtedness certified under any provision of this act, by the superintendent of banks, as being in conformity with the requirements of any paragraph of subdivision three of this section.

Sec. 67. 1. No savings bank shall loan money except on adequate security of real or personal property, and no such loan shall be made for a period longer than ten years; *provided*, that no such loan shall be made on unsecured notes. .

2. No savings bank shall invest or loan more than five per centum of its assets on any one bond issue, except bonds of the United States, of the State of California, bonds for which the

faith and credit of the United States or of the State of California are pledged, or bonds of any county, city and county, city or school district in this state, or bonds of any irrigation district such as are legal for investment by savings banks.

3. No savings bank shall loan money:

(a) On bonds of the character specified in paragraphs (a), (b), (c) and (d) of subdivision three of section sixty-one of this act, unless such bonds shall have a market value at least ten per centum in excess of the amount loaned thereon; or,

(b) On bonds of the character specified in paragraphs (e), (f) and (g) or on bonds or notes of the character specified in paragraph (i) of subdivision three of section sixty-one of this act, unless such bonds or notes shall have a market value at least fifteen per centum in excess of the amount loaned thereon; or,

(c) On bonds legal for investment by savings banks in the states of New York or Massachusetts, unless such bonds shall have a market value at least fifteen per centum in excess of the amount loaned thereon; or,

(d) On personal property unless such personal property shall have a market value at least fifty per centum in excess of the amount loaned thereon; or,

(e) On other bonds, or on the capital stock of any corporation, unless such bonds or stock shall have a market value at least fifty per centum in excess of the amount loaned thereon; *provided, however*, that no loan shall be made upon the capital stock of any bank unless such bank has been in existence at least two years and has earned and paid a dividend on its capital stock.

4. No savings bank shall make any loan on the security of real estate, except it be a first lien, and in no event to exceed sixty per centum of the market value of any real estate taken as security except for the purpose of facilitating the sale of property owned by such savings bank; *provided*, that a second lien may be accepted to secure the repayment of a debt previously contracted in good faith; *and provided, also*, that any savings bank holding a first mortgage or deed of trust on real estate may take or purchase and hold another and immediately

subsequent mortgage or deed of trust thereon, but all such loans shall not exceed in the aggregate sixty per centum of the market value of the real estate securing the same; *provided, further*, that a savings bank may loan not to exceed ninety per centum of the face value of a note or bond secured by a first mortgage or deed of trust on real estate, but in no event shall any such loan exceed ninety per centum of sixty per centum of the market value of the real estate covered by said mortgage or deed of trust.

5. No savings bank shall purchase, invest or loan its capital, surplus or the money of its depositors, or any part of either, in mining shares or stock. Any president or managing officer who knowingly consents to a violation of any provision of this section shall be guilty of a felony.

Sec. 32. Any bank receiving trust funds in accordance with the provisions of this act relating to trust companies must not mingle such trust funds with the other assets of the corporation, and such funds shall not be carried or counted as any part of the lawful reserve provided for in this act. The officers of any bank who knowingly violate or consent to the violation of this provision shall be guilty of a felony.

Sec. 34. No bank shall purchase or invest its capital or money of its depositors, or any part of either, in the shares of its own capital stock; nor loan its capital or the money of its depositors, or any part of either, on the shares of its own capital stock, unless such purchase or loan shall be necessary to prevent loss on debts previously contracted in good faith.

Note.—By incorporating the savings bank provision, regarding investments, in the trust company law, it seems that both trust companies and individual trustees are permitted to invest in the securities named. Sec. 67, of the savings bank law, seems to permit a loan upon personal property or upon stocks of corporations, subject to the limitations mentioned. Whether or not this provision applies also to trustees does not appear to have been determined. Since California has adopted the "good faith" rule and has dealt liberally with trustees, it is probable that any loans made in accordance with the provisions of the savings bank law would be declared legal, provided the trustee had exercised due diligence.

Purchase of Trust Property by Trustee.

A trustee cannot purchase property for himself either directly or indirectly; but he may purchase from the beneficiary if the transaction is fair and honest. *Golson v. Dunlap*, 73 Cal. 157; *Wickersham v. Crittenden*, 93 Cal. 17.

Good Faith Required.

When trustees act in good faith courts of equity will be indulgent, especially when they act under the advice of counsel. Supine negligence or willful default will render them liable; but to make them liable for mere errors of judgment would tend to discourage good and prudent men from undertaking a trust. *Ellig v. Naglee*, 9 Cal. 684.

Advice of Attorney Not a Complete Defense.

The advice of an attorney does not necessarily shield a trustee where a loan is made on improper security. A will directed an executor to loan the funds upon first-class real estate security, and the executor loaned a thousand dollars upon realty valued at twenty-two hundred dollars. The property was already subject to a loan of two thousand dollars, and a search of the record would have revealed this fact. The attorney for the executor secured the loan without searching the record. The trustee was negligent in not having determined whether the title was clear. *Estate of Holbert*, 48 Cal. 627.

Trustee Must Bear Expenses Resulting from Unauthorized Loan.

When an executor makes an illegal or unauthorized investment, the expenses of litigation and attorney's fees cannot be charged against the estate. *Estate of Holbert*, 48 Cal. 627.

Mingling Trust Funds and Using in Own Behalf.

When a trustee mingles trust funds with his own and uses them in his own business he is not only liable for the loss of the fund, but the court has the right to deprive him of commissions, and to impose upon him interest compounded annually up to the time of the settlement of the accounts. *Miller v. Lux*, 100 Cal. 609; *In re Thompson*, 101 Cal. 349.

A guardian who mingles the funds of his ward with his own is liable for the return of the principal with legal interest thereon, compounded annually, where it is not shown that larger profit was realized. *Estate of Cousins*, 111 Cal. 441.

The same rule applies to executors, administrators and trustees. *In re Dow*, 133 Cal. 446; *Bemmerly v. Woodward*, 124 Cal. 568; *Estate of Stott*, 52 Cal. 403; *Estate of Clark*, 53 Cal. 359; *Estate of Hilliard*, 53 Cal. 423.

But where an administrator does not use the funds of the estate in his own business, and does not make any profit from their use, the mere fact that he mingles the proceeds of a sale with his own funds

does not justify charging him with interest thereon since he had a right to the custody of the funds. Neither is the deposit of funds in a brother's bank sufficient to justify a finding of embezzlement against an administrator. *Estate of Sarment*, 123 Cal. 331; *Estate of Marre*, 127 Cal. 128.

Must Invest in Authorized Securities.

It is the imperative duty of a trustee to invest trust funds in authorized securities and keep them productive. *Bemmerly v. Woodward*, 124 Cal. 568.

Carrying on Business of Testator.

Unless specifically authorized by the instrument creating the trust, a trustee carries on the business of the creator of the trust at his peril. If profit is made it inures to the benefit of the estate; if there is loss the trustee must bear it. *In re Rose*, 80 Cal. 166.

Giving Away Worthless Assets.

An executor has no right to give away the assets of the estate, even though he may consider them worthless, and an attorney who represents the executor has no right to receive such a gift. *In re Radovich*, 74 Cal. 536.

Investment in Bonds of a Corporation in Which Trustee Is Interested.

A trustee who invests in the bonds of a corporation in which he is interested is in effect dealing with the funds of the estate for his own benefit, and the investment is illegal. *Birmingham v. Wilcox*, 120 Cal. 467.

Trustee Responsible for Illegal Investments of His Co-Trustee.

The creator of a trust had entrusted the management of his estate during his lifetime to two persons, each of whom managed certain portions of the property. The trust instrument did not authorize the trustees thus to divide the management of the estate. Each was responsible for the acts of the other in the investment of the trust funds. *Birmingham v. Wilcox*, 120 Cal. 467.

Investment by Guardian.

A guardian has power to invest the estate of his ward without an order of court, but if he does so, it may generally be said that he takes the risk. This rule was applied where a guardian invested his ward's money in notes secured by real estate the value of which was equal only to the face value of the notes. An order of court would have protected the guardian. *In re Cardwell*, 55 Cal. 137; *Estate of Carver*, 118 Cal. 73.

There is no specific provision regarding investments by a guardian, but the statutes provide for the sale of a ward's property and the investment of the proceeds under an order of court, when it is necessary for the interest of the ward. It would seem that a guardian who wishes to protect himself should obtain an order of court for investments or change of investments. Civil Code, Secs. 1780, 1792.

Taking Loans in Individual Name.

The words "trust property" in Sec. 2236 of the civil code are broad enough to include land as well as moneys. A trustee who willfully and unnecessarily takes title to real property belonging to the trust in his individual name or takes a note with a mortgage as security for money belonging to the estate is guilty of mingling trust property with his own and is liable for its safety in all events. Matter of Bane, 120 Cal. 533.

The same rule applies if he deposits money in bank in his own name. Estate of Wood, 159 Cal. 466.

Temporary Deposit of Funds.

A trustee may deposit trust moneys temporarily in a bank for safe keeping, and in selecting the bank he is required to exercise the care and prudence which a man of ordinary skill and ability would exercise, and he must mark the deposit in such a manner as to show its trust character. Estate of Wood, 159 Cal. 466.

Funds Cannot be Left on Deposit in Bank as an Investment.

A deposit in bank, savings or otherwise, is not warranted as an investment, for such a deposit amounts to a mere loan to the bank on personal security. Estate of Wood, 159 Cal. 466.

Trustee Must Not Lose Control of Trust Funds.

By depositing money in a savings bank and surrendering the bank book to a surety company, whose consent is necessary to the withdrawal of any of the fund, the trustee loses exclusive control of the fund and thereby violates his legal duty. Estate of Wood, 159 Cal. 466; Forsythe v. Woods, 11 Wall (U. S.) 484; Perry on Trusts, Sec. 443.

COLORADO.

TRUST COMPANIES.

Statutes Annotated, 1910.

(With Amendments to 1914.)

Sec. 307. Investment of Trust Funds.—The trustees or board of directors shall have a discretionary power of investing moneys received by them in trust in public stocks or bonds of the United States or of any individual state, or in the bonds or stock of any incorporated city or county of the state duly authorized to be issued, or in such real or personal securities as they may deem proper, but no trust company shall invest in the stock or bonds of any private incorporated company.

Sec. 308. No Loans to Officers.—No loan shall be made by any trust company directly or indirectly to any trustee, director or other officer thereof and no loan shall be made upon stock of the company.

Sec. 310. Governed by Same Laws as Individual Trustee.—In the exercise by said company of the powers herein authorized as guardian, executor, administrator, committee or conservator of lunatics, or of any office or duty imposed by any court, said company shall be subject to the same responsibilities, shall have the same powers, and shall receive the same compensation as fixed by law with relation to individuals holding similar offices or trusts, except as herein otherwise specially provided. The exercise of the other powers and the performance of the other duties by said company may be as to compensation and otherwise matters of contract with the parties interested.

Sec. 311. Trust Funds and Investments Shall be Kept Separate.—The said company shall keep all trust funds and

investments separate and apart from the assets of the company, and all investments made by said company as fiduciary shall be so designated that the trust to which such investments shall belong shall be clearly known.

TRUSTEES GENERALLY.

Annotated Statutes, 1912.

(With Amendments to 1914.)

Sec. 7147. It shall be lawful for executors, administrators, guardians or conservators to invest the moneys belonging to their respective estates in the bonds of the United States, or in the bonds of this state, or upon mortgage security to be approved by order of the County Court to be made and entered of record. Every such investment or lending shall be forthwith reported to the County Court and no loan of money shall be for a longer period than one year: Provided, that guardians and conservators may, by order of the County Court, made and entered of record in open court, make such loans for a longer period, not exceeding five years and not exceeding in any case the minority of the infant, and in all such cases the interest shall be made payable at least as often as once each year.

Investment in Bonds or Stock of Private Corporations Prohibited.—Section 36, of Article 5, of the Colorado Constitution provides that, "No act of the general assembly shall authorize the investment of trust funds by executors, administrators, guardians, or other trustees, in the bonds or stock of any private corporation."

Liability for Purchase of Trust Property.

Where a trustee becomes the purchaser of trust property, the *cestui que trust* may set aside the sale or hold the trustee liable, and may require an accounting, without any further showing than the mere fact of the purchase during the continuance of the trust. *French v. Woodruff*, 25 Colo. 339. Where the trustee without the full knowledge and consent of his *cestui que trust*, in dealing with the trust property, assumes to act as both vendor and vendee, the *cestui que trust* may

avoid the transaction. *Glengary Consolidated Mining Company et al v. Boehmer*, 28 Colo. 1.

Trustee May Not Deal with Trust Property for His Own Benefit.

A trustee cannot deal with the trust property for his own benefit or become the owner of part of the estate through a settlement with the beneficiaries, unless he can show that the transaction was perfectly fair and free from suspicion. *Lathrop v. Pollard*, 6 Colo. 424; *Loveland v. Fisk*, 18 Colo. 201; *Hallack v. Traber*, 23 Colo. 14.

Mingling of Trust Funds.

A trustee who mingles trust funds with his own must account for the profits. He must keep the funds separate and apart and must follow the directions of the trust instrument, making investments in his name as trustee. *Hake v. Stott's Exr.*, 5 Colo. 140; *Smelting Company v. Reed*, 23 Colo. 523.

Importance of Authorization by Court.

In Colorado the county court has very full control over executors, administrators and guardians. The management of the estate is a duty which belongs to the court, and a trustee who wishes to protect himself completely when making investments should obtain a court order. *Vandevier v. County Court*, 3 Colo. App. 425.

CONNECTICUT.*

TRUSTEES GENERALLY.

Revised Statutes, 1902.

(With Amendments to 1914.)

Sec. 254. Investment of Trust Funds.—Trust funds, unless it is otherwise provided in the instrument creating the trust, may be loaned on the security of mortgages on unincumbered real estate in this state, double in value the amount loaned, or may be invested in such mortgages or in the bonds or loans of this state, or of any town, city or borough of this state, or in any bonds, stocks or other securities which the savings banks in this state are or may be authorized by law to invest in, or may be deposited in savings banks incorporated by this state.

Sec. 255. Continuing Investments as Received.—Trust funds received by executors, trustees, guardians, or conservators may be kept invested in the securities received by them, unless it be otherwise ordered by the court of probate, or unless the instrument under which said trust was created shall direct that a change of investments shall be made, and they shall not be liable for any loss that may occur by depreciation of such securities.

Savings Banks.—Since it is lawful for trustees to invest in securities which are authorized for savings banks, it is necessary to give the provisions of the savings bank law relative to investments. It will be noted that section 30 of that law permits investments in personal securities. This section does not appear to have been construed by the courts, and we are of the opinion that it would be unwise for a trustee to invest in such security.

* For list of legal investments in Connecticut see Part III.

Laws of 1913.

Chapter 127.

Sec. 1. Savings banks may invest their deposits and surplus only as hereinafter provided.

Sec. 2. In the stock or bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is pledged to provide for the payment of the principal and interest, including the bonds of the District of Columbia.

Sec. 3. In the stock or bonds or interest-bearing obligations of any state of the United States which was admitted to statehood prior to January 1, 1896, which has not, within ten years previous to making such investment by such corporation, defaulted for more than ninety days in the payment of any part of either principal or interest of any debt authorized by the legislature of such state to be contracted; and in the bonds or interest-bearing obligations of any such state of the United States which have been issued and outstanding for a period of at least ten years previous to making such investment by such corporation, and which have been issued in pursuance of the authority of the legislature of such state, (1) for the funding or settlement of any previous obligation of such state theretofore in default, or (2) for the refunding of such funding or settlement obligation of such state theretofore in default, and on which said funding or settlement obligation or obligation issued to refund the same there has been no default in the payment of either principal or interest since its issue, provided the authorization of any obligation by the legislature of any such state hereinbefore referred to shall not have been in violation of any constitutional provision, and provided such bond or interest-bearing obligation shall be the direct obligation of such state and that the faith and credit of the state shall be pledged for its payment, principal and interest.

Sec. 4. In the obligations of any county, town, city, borough, school district, fire district, or sewer district, in this state.

Sec. 5. In the stock or bonds of any incorporated city situated in one of the states of the United States which was admitted to statehood prior to January 1, 1896, and which was incorporated as a city, under the same or a different name, at least twenty-five years prior to making such investment, and which has not less than twenty thousand inhabitants as ascertained by the United States or state census, or any municipal census taken by authority of the state, next preceding such investment, provided the amount of the bonds of such city, including the issue in which such investment is made, and its proportion, based on the valuations of property therein for the assessment for taxation next preceding such investment, of the county and town debt, after deducting the amount of its water debt and the amount of the sinking funds which are available for payment of its bonds other than water bonds, does not exceed seven per centum of the valuation of the taxable property in such city, to be ascertained by the valuation of property therein for the assessment of taxes, next preceding such investment, and provided the city issuing such bonds, or the state in which it is located, has not defaulted for more than ninety days in the payment of any of its funded indebtedness or interest thereon, within fifteen years next preceding the purchase of such bonds by the savings bank. The provisions of this section shall not authorize the investment of funds in any "special assessment" or "improvement" bonds, or other bonds or obligations which are not the direct obligations of the city issuing the same, and for which the faith and credit of the issuing city are not pledged. A city or state shall be considered to be in default within the meaning of this act while any unpaid and overdue obligation, either principal or interest, shall be outstanding.

Sec. 6. In the bonds or interest-bearing obligations issued by a railroad corporation organized under the laws of any of the New England states, and owning in fee not less than three hundred miles of railroad located in said states, and which has paid in dividends in cash an amount equal to not less than four per centum per annum on its outstanding shares of capital stock in each fiscal year for the five years

next preceding such investment, or in the bonds or interest-bearing obligations issued by a railroad, terminal, depot, bridge, tunnel, or street railway corporation, organized under the laws of any of the New England states or the state of New York assumed by a railroad corporation organized under the laws of any of the New England states and owning in fee not less than three hundred miles of railroad located in said states and complying with all the provisions of this section; if any such railroad corporation shall be leased to another railroad corporation organized under the laws of any of the New England states and owning in fee not less than three hundred miles of railroad located in said states, under a lease which provides for the payment by the lessee as rental of an amount sufficient to pay dividends on the capital stock of the lessor amounting in the aggregate in each fiscal year of said lessor corporation during the term of said lease to not less than four per centum on its outstanding shares of capital stock, such lessor shall be regarded as having paid its dividends within the meaning of this section, but in case the lessee shall hold any shares of the capital stock of the lessor such shares shall not be considered as outstanding within the meaning of this section.

Sec. 7. In the bonds or debentures actually issued by a railroad corporation incorporated in any of the New England states, at least one-half of the railroad of which is located in said state, whether such corporation is in possession of and is operating its own railroad or such railroad is leased to another railroad corporation incorporated in any one of the New England states, provided such bonds or debentures shall be secured either by a mortgage which was at the date thereof, or is at the time of making the investment, a first mortgage on not less than seventy-five per centum of the railroad of such corporation owned in fee at the date of the mortgage, or by a refunding mortgage which provides for the retirement of all prior lien mortgage bonds of such railroad corporation, or by a mortgage which is a prior lien on some part of the railroad covered by a refunding mortgage which provides for the retirement of all outstanding prior

lien bonds, or that if the railroad and railroad property of such corporation are unincumbered by mortgage, such bonds or debentures shall be issued under the authority of one of said states which provides by law that no such railroad corporation which has issued bonds or debentures shall subsequently execute a mortgage upon its road, equipment, franchise, or upon any of its real or personal property, without including in and securing by such mortgage all bonds or debentures previously issued and all preëxisting debts and liabilities, and provided such corporation has paid in dividends in cash an amount equal to not less than four per centum per annum on all its outstanding capital stock in each fiscal year for the five years next preceding such investments. If any such railroad company shall hold the railroad of another such railroad corporation under a lease which provides for the payment by the lessee as rental of an amount sufficient to pay dividends on the capital stock of the lessor amounting in the aggregate in each fiscal year of said lessor during the term of said lease to not less than four per centum on all its outstanding capital stock, such lessor shall be regarded as having paid its dividends within the meaning of this section, but in case the lessee shall hold any shares of the capital stock of the lessor such shares shall not be considered as outstanding within the meaning of this section.

Sec. 8. No bonds or other interest-bearing obligations shall be made a legal investment by sections six and seven in case the authorized issue thereof, with all outstanding prior debts of the issuing or assuming corporation, including all evidences of debt that may legally be issued under any of its prior authorizations or under any of its assumed prior authorizations, after deducting therefrom, in case of a refunding mortgage, the bonds reserved under the provisions of said mortgage to retire prior debts at maturity, shall exceed three times the outstanding capital stock of said corporation at the date of such investment.

Sec. 9. In the bonds issued by a railroad, terminal, depot, bridge, tunnel, or street railway corporation organized under the laws of any of the New England states or the state of

New York, the property of which is located wholly or in part in one of said states, or in the bonds issued by a railroad, terminal, depot, bridge, tunnel, or street railway corporation, organized under the laws of any of said states, assumed by a railroad, terminal, depot, bridge, tunnel, or street railway corporation organized under the laws of said states, provided such bonds shall be secured either by a mortgage which was at the date thereof, or is at the time of making the investment, a first mortgage on not less than seventy-five per centum of the railroad owned in fee at the date of the mortgage, in the case of a railroad or street railway corporation, or the fixed property, in the case of a terminal, depot, bridge, or tunnel corporation, owned by the corporation issuing the bonds, or by a refunding mortgage which provides for the retirement of all prior lien bonds of such corporation or by a mortgage which is a prior lien on some part of the property covered by a refunding mortgage which provides for the retirement of all outstanding prior lien bonds. No bond shall be made a legal investment under this section unless the bonds are guaranteed principal and interest by endorsement by, or guaranteed principal and interest by endorsement which guaranty has been assumed by a railroad corporation, owning in fee not less than three hundred miles of railroad in the New England states, whose bonds are made a legal investment under section six. No bonds shall be made a legal investment by this section in case the mortgage securing the bonds shall authorize a total issue of bonds which, added to the total debt described in section eight, of the guaranteeing corporation, including therein the authorized amount of all previously guaranteed bond issues, shall exceed three times the outstanding capital stock of said guaranteeing corporation at the time of making said investment.

Sec. 10. In the mortgage bonds, as described in section fifteen, issued or assumed by any railroad corporation incorporated under the laws of the United States, or any state, provided such railroad corporation owned in fee during each of the five fiscal years of such railroad corporation next preceding the date of such investment not less than five hundred

miles of standard gauge railroad, exclusive of sidings, within the United States, and provided such railroad corporation has complied during each of said fiscal years with the provisions of section fourteen, or if such corporation owned in fee less than five hundred miles of such railroad, the gross earnings of such corporation, as reckoned in section fourteen, shall have been not less than ten million dollars.

Sec. 11. In the mortgage bonds, as described in section fifteen, issued or assumed by any railroad corporation incorporated under the laws of the United States, or any state thereof, provided during each of the five fiscal years of such railroad corporation next preceding the date of such investment, its railroad subjected to the lien of the mortgage securing its bonds has been operated by a corporation described in, and which has complied with all the provisions of, sections ten and fourteen. No bonds shall be made a legal investment by this section unless the bonds are guaranteed principal and interest by endorsement by, or guaranteed principal and interest by endorsement which guaranty has been assumed by, the corporation operating the railroad covered by the mortgage securing the bonds and which has complied with all the provisions of sections ten and fourteen.

Sec. 12. In the mortgage bonds as described in this act issued or assumed by any terminal, depot, bridge, or tunnel company, incorporated under the laws of the United States, or any state, provided the property of such terminal, depot, bridge, or tunnel company is used by one or more railroad corporations described in, and which have complied with all the provisions of, sections ten and fourteen. No bond shall be made a legal investment by this section unless the bond is guaranteed principal and interest by endorsement by, or guaranteed principal and interest by endorsement which guaranty has been assumed by, one or more railroad corporations described in, and which has complied with all the provisions of, sections ten and fourteen.

Sec. 13. In the mortgage bonds as described in section fifteen issued or assumed by any railroad corporation incorporated under the laws of the United States, or any state,

provided, during each of the five fiscal years of such railroad corporation next preceding the date of such investment, such railroad corporation owned in fee not less than one hundred miles of standard gauge railroad, exclusive of sidings, within the United States, and provided such railroad corporation has complied during each of said fiscal years with the provisions of section fourteen. No bonds shall be made a legal investment by this section unless the bonds are guaranteed principal and interest by endorsement by, or guaranteed principal and interest by endorsement which guaranty has been assumed by, a corporation described in, and which has complied with all the provisions of, sections ten and fourteen, nor unless it complies with the provisions of section sixteen.

Sec. 14. Any railroad corporation described in sections ten and thirteen shall comply with the provisions of this section during each of the five fiscal years of such railroad corporation next preceding the date of such investment, before any of its mortgage bonds, as described in section fifteen, shall be made a legal investment. Such railroad corporation shall have paid the matured principal and interest of all indebtedness and shall have paid in dividends in cash to its stockholders an amount equal to at least four per centum upon all its outstanding capital stock; the gross earnings from the operation of the property of such railroad corporation, including therein the gross earnings of all railroads leased and operated or controlled and operated by said corporation, and the gross earnings from the sale of coal from mines owned or controlled by it, shall not have been less in amount than five times the amount necessary to pay the interest payable upon its entire outstanding indebtedness, the rentals of all leased lines, and the interest on all outstanding indebtedness of railroads controlled and operated which are not owned by said corporation, after deducting from said interest and rentals interest and dividends received from the stocks, bonds, or notes of railroad corporations not operated by said corporation, which have been deposited with a trustee as the only

security for the payment of bonds or notes issued by said corporation, but not in excess of the interest on said last named bonds or notes.

Sec. 15. Whenever the term "mortgage bonds" is issued in sections ten to twenty, inclusive, it shall mean either (1) that the mortgage securing the bonds was at the date thereof, or is at the date of such investment, a first mortgage on not less than seventy-five per centum of the railroad, in the case of a railroad corporation, or the fixed property, in the case of a terminal, depot, bridge, or tunnel company, owned in fee at the date of the mortgage by the corporation which executed the mortgage and issued the bonds; that seventy-five per centum of the railroad subject to the lien of said mortgage is connected; that the date of said mortgage is at least five years prior to the date of such investment; unless the corporation issuing, assuming, or guaranteeing the bond has complied with section fourteen for each of the ten fiscal years of such corporation next preceding the date of such investment; but a mortgage given in substitution for and not greater in amount than such mortgage, and covering the same railroad or property, shall be considered to be in accordance with this requirement; (2) that if the mortgage securing the bonds was at the date thereof, or is at the date of such investment, not a first mortgage on not less than seventy-five per centum of the railroad owned in fee at the date of the mortgage, it is a first mortgage on at least seventy-five per centum of the railroad subject to the lien of said mortgage at the date thereof; but if any stocks or bonds are deposited with the trustee of said mortgage as part security therefor, representing or covering railroad mileage not owned in fee, the bonds secured by said mortgage shall not become legal investments unless said corporation owns in fee at least seventy-five per centum of the actual mileage which is subject to the lien of such mortgage, including the mileage which is represented or covered by said stocks or bonds; that seventy-five per centum of the railroad of said mortgage is at least five years prior to the date of such investment; unless the corporation issuing, assuming, or guaranteeing the bond has complied with section

fourteen for each of the ten fiscal years of such corporation next preceding the date of such investment; but a mortgage given in substitution for and not greater in amount than such mortgage, covering the same railroad or property, shall be considered to be in accordance with this requirement; (3) that the mortgage securing the bonds was at the date thereof, or is at the date of such investment, a first mortgage, or a mortgage or trust indenture which is in effect a first mortgage upon all the railroad, subject to the lien of said mortgage or trust indenture by virtue of the irrevocable pledge with the trustee thereof of an entire issue or issues of bonds which are a first lien, upon the railroad of a railroad corporation which is owned and operated, controlled and operated, or leased and operated by the corporation issuing or assuming said bonds; that seventy-five per centum of the railroad subject to the lien of said mortgage is connected; that the date of said mortgage is at least five years prior to the date of such investment, unless the corporation issuing, assuming, or guaranteeing the bonds has complied with section fourteen for each of the ten fiscal years of such corporation next preceding the date of such investment; but a mortgage given in substitution for and not greater in amount than such mortgage, and covering the same railroad property, shall be considered to be in accordance with this requirement; (4) that the mortgage securing the bonds was at the date thereof, or is at the date of such investment, a refunding mortgage which provides for the retirement of all prior lien mortgage bonds of said corporation outstanding at the time of said investment, and covering at least seventy-five per centum of the railroad owned in fee by said company at the date of said mortgage. No mortgage is to be regarded as a refunding mortgage under the provisions of this section unless the bonds which it secures mature at a later date than any bond which it is given to refund, or, in case bonds are issued to mature at an earlier date than any bond which it is given to refund, the mortgage contains the provision that bonds issued to mature at an earlier date may be retired by a like amount of bonds reissued under said mortgage; (5) that the mortgage

securing the bonds is a prior lien to a refunding mortgage described above, on some part of the railroad or railroad property covered by said refunding mortgage, provided the bonds issued under such mortgage are to be refunded by said refunding mortgage, and the property covered by said prior lien mortgage is operated by, and its operations included in, those of the railroad corporation issuing said refunding mortgage.

Sec. 16. No bonds shall be made a legal investment by section ten in case the mortgage securing the same shall authorize a total issue of bonds, which, with all outstanding prior debts of the issuing or assuming corporation, including all bonds not issued that may legally be issued under any of its prior debts, or of its assumed prior debts, after deducting therefrom in case of a refunding mortgage, the bonds reserved under the provisions of said mortgage to retire prior debts at maturity, shall exceed three times the outstanding capital stock of said corporation at the date of such investment. No bond shall be made a legal investment by sections eleven, twelve, and thirteen in case the mortgage securing the same shall authorize a total issue of bonds, which added to the total debt, as defined in this section, of the guaranteeing corporation, including therein the authorized amount of all previously guaranteed bond issues, shall exceed three times the capital stock of said guaranteeing corporation outstanding at the time of making said investment. In case of a mortgage executed prior to the passage of this act, under which the total amount of bonds which may be issued is not specifically stated, the amount of bonds outstanding thereunder at the date of such investment shall be considered as the total authorized issue.

Sec. 17. Bonds which have been or shall become legal investments under any of the provisions of sections ten to twenty, inclusive, shall not be rendered illegal, although the corporation issuing, assuming, or guaranteeing such bonds, shall fail for a period not exceeding two successive fiscal years to comply with the requirements of sections ten and fourteen, but no further investment in the bonds issued, assumed, or guaranteed by said corporation shall be made after the

first fiscal year of such failure; but if, after the expiration of said period, said corporation complies for the following fiscal year with all the requirements of sections ten and fourteen it shall be regarded as having complied therewith during said period, and thereupon said bonds shall be legal investments, but in case of any subsequent failure to comply with said sections ten and fourteen the bonds of said corporation shall not be purchased until said corporation shall have complied each year for five successive years with said sections ten and fourteen.

Sec. 18. Bonds which have been or shall become legal investments under any of the provisions of sections ten to twenty, inclusive, shall not be rendered illegal, because the property upon which they are secured has been or shall be conveyed to or legally acquired by another railroad corporation, and the corporation which issued or assumed said bonds has been or shall be consolidated with another railroad corporation, if the consolidated or purchasing corporation shall assume the payment of said bonds and so long as it shall continue to pay regularly interest, or dividends, or both, upon the securities issued against, in exchange for, or to acquire the stock of the corporation consolidated, or the property purchased, or upon securities subsequently issued in exchange or substitution therefor, to an amount at least equal to four per centum per annum upon the capital stock outstanding at the time of such consolidation or purchase, of said corporation which issued or assumed said bonds.

Sec. 19. If a railroad corporation which has complied with all the requirements of sections ten and fourteen except that the period of compliance is less than five years, shall be, or shall have been, consolidated or merged with, or its railroad purchased and all the debts of such corporation assumed by, another railroad corporation incorporated under the laws of the United States, or any state, the corporation so succeeding shall be considered as having complied with all the provisions of said sections during those successive years next preceding the date of such consolidation, merger, or purchase in which said consolidated, merged, or purchased corporations,

if considered as one continuous corporation in ownership and possession, would, taken together, have so complied, provided in the case of a railroad corporation which has complied with all the requirements of said sections, except that the period of compliance is less than five years, said succeeding corporation shall continue so to comply for a further period which shall make such compliance equivalent to at least five successive years.

Sec. 20. If, by means of consolidation, merger, or purchase, a railroad corporation shall own and possess the properties and franchises which, prior thereto, belonged to similar corporations, and, during the years next preceeding such consolidation, merger, or purchase, one or more of said corporations have regularly paid in cash to stockholders dividends in amounts equaling or exceeding four per centum per annum upon the entire capital stock of the successor corporation outstanding at the time of the investment, such successor corporation shall be considered as having paid such dividends during the same period of years.

Sec. 21. Savings banks may invest not exceeding two per centum of their deposits and surplus in equipment trust notes, bonds, or certificates issued by, or which are guaranteed by endorsement both as to principal and interest by, or which are secured by lease of equipment to, a railroad corporation which, in case of a railroad corporation incorporated under the laws of any of the New England states, has complied with section six, or which, in the case of a railroad corporation incorporated under the laws of any other state, or of the United States, has complied with all the provisions of sections ten and fourteen, provided said notes, bonds, or certificates are secured by a first lien on, or by a lease and conditional sale of, new standard railroad equipment free from other encumbrances, for the purchase of which said notes, bonds, or certificates were issued at not exceeding ninety per centum of the purchase price thereof, and provided the instrument under which such notes, bonds, or certificates are issued, or the lease of such equipment to the railroad corporation, provides for the proper maintenance of the equipment covered thereby and

for the payment of the entire issue of such notes, bonds, or certificates in not exceeding fifteen annual or thirty semi-annual installments, without the release of any part of the lien or interest in any of the equipment securing such notes, bonds, or certificates until the entire issue of such series of notes, bonds, or certificates shall have been paid or redeemed. No equipment trust notes, bonds, or certificates shall be made a legal investment by this section in case the series authorizes an amount which, added to the total debt as defined in section eight in the case of a railroad corporation organized under the laws of any of the New England states, or section sixteen in the case of a railroad corporation organized under the laws of any other state or of the United States, which issued or guaranteed or is the lessee of the equipment trust notes, bonds, or certificates, including therein the outstanding amount of all previously issued series of such equipment trust notes, bonds, or certificates, shall exceed three times the capital stock of such railroad corporation outstanding at the time of making said investment.

Sec. 22. Savings banks may invest not exceeding two per centum of their deposits and surplus in bonds issued by any street railway corporation incorporated in this state, the railway of which is located wholly or in part therein, provided such bonds are secured by a mortgage which was at the date of the mortgage or is at the date of the investment a first mortgage on not less than seventy-five per centum of the railway of such corporation owned in fee at the date of the mortgage, and provided the gross earnings of said corporation each fiscal year for the five years next preceding the date of such investment, were not less than one hundred thousand dollars, and that said corporation in each of said years earned and paid in dividends in cash an amount equal to at least four per centum per annum upon the outstanding capital stock, and provided, at the date of any such dividend, the outstanding capital stock is equal to at least one-half of the debt of such corporation.

Sec. 23. Savings banks may invest not exceeding two per centum of their deposits and surplus in mortgage bonds and

other interest-bearing obligations of any water company supplying water for domestic use to communities in this state having a population of not less than fifty thousand whose franchise is an exclusive one and unlimited in time, provided the amount of all the outstanding debts of such company does not exceed its capital stock, and provided such water company has earned each year and paid in cash from its officially reported net earnings, as shown by its annual report or other sworn official statement, to municipal, state, or United States authorities, dividends of not less than four per centum per annum on its entire outstanding capital stock, for a period of four years next preceding the making of the investment.

Sec. 24. Savings banks may invest not exceeding two per centum of their deposits and surplus in bonds of any telephone company incorporated in this state, whose property is located chiefly in this state, which are secured by a first mortgage upon at least seventy-five per centum of the property of such company, including its franchises, rights, and privileges, and limiting the amount of bonds issuable thereunder to seventy-five per centum of the valuation of the property mortgaged, excluding any valuation of said franchises, rights, and privileges, and providing the gross income of such telephone company shall have been not less than two million dollars per annum during each of the five fiscal years of such telephone company next preceding the date of such investment.

Sec. 25. Savings banks may invest not exceeding two per centum of their deposits and surplus in bonds of any telephone company incorporated in any of the New England states, or in the state of New York, and secured by a first mortgage upon at least seventy-five per centum of the property of such telephone company, or by the deposit with a trust company incorporated under the laws of one of the New England states or of the state of New York of bonds and shares of stock of other telephone corporations under an indenture of trust which limits the amount of bonds so secured to seventy-five per centum of the value of the securities deposited as stated and determined in said indenture, and pro-

vided the gross income of such telephone company shall have been not less than twenty-five million dollars per annum during each of the five fiscal years of such telephone company next preceding the date of such investment. No bond of a telephone company shall be made a legal investment under sections twenty-four and twenty-five unless during each of the five fiscal years of such telephone company next preceding the date of such investment said telephone company shall have paid the matured principal and interest of all its indebtedness, and shall have paid, during each of said years, in cash dividends an amount equal to not less than six per centum per annum on all its outstanding issues of capital stock, and the dividends paid on the capital stock of such telephone company shall not have been less than the total amount necessary to pay the interest upon its entire outstanding indebtedness.

Sec. 26. Savings banks may invest in the capital stock of any bank or trust company located in this state, or in the city of New York, or in the city of Boston in the state of Massachusetts, but no savings bank shall hold by way of investment and as security for loans, more than twenty per centum of its deposits in the stocks of such banks or trust companies, at par value, nor more than three per centum of its deposits, nor more than one hundred thousand dollars of par value in, nor more than one-quarter of the capital stock of, any such bank or trust company. The provisions of this section shall not render illegal any such investments now owned by any bank or trust company.

Sec. 27. Savings banks may invest in loans secured by first mortgage on unencumbered real estate, not to exceed fifty per centum of the value of such real estate, located in this state, or in the county of Providence or Washington in the state of Rhode Island, or in the county of Hampden or Berkshire in the State of Massachusetts, or in the county of Dutchess, Putnam, or Westchester in the state of New York.

Sec. 28. When any loan is made by a savings bank upon real estate the security shall be appraised by two or more suitable persons, well known in the community where such loan is made, one of whom shall be a trustee of the bank

making the loan. Such appraisal shall express upon its face the amount at which such property is appraised, and, with a certificate of title or a title insurance policy, shall be lodged and kept with the institution making such loan. No loan shall be made by any savings bank to any corporation or association or ecclesiastical society secured by a mortgage upon its property, unless the same shall be accompanied by the individual guaranty of some responsible party or parties, or by other collateral security of value equal to the amount of the sum loaned. The directors or trustees of any bank consenting to any loan contrary to the provisions of this section shall be individually responsible for any loss by reason of such loan.

Sec. 29. Savings banks may invest not exceeding twenty per centum of their deposits and surplus in notes secured by pledge of stock or bonds as collateral, provided the corporation issuing such stock or bonds shall have paid thereon dividends or interest at the rate of not less than four per centum per annum during the two years next preceding the time when such loan is made; or by the pledge of any stock or bonds or other obligations which under the provisions of this act may be purchased by savings banks; but the market value of any securities given to secure any collateral loan shall be at least twenty per centum in excess of the amount of the loan and not more than five per centum of the aggregate deposit in any savings bank shall be loaned on the stock, bonds, or other obligations of one corporation; or by the pledge of deposit accounts and books in savings banks in this state to an amount not exceeding the balance due from said savings banks on such deposit account.

Sec. 30. Savings banks may invest not exceeding ten per centum of their deposits and surplus in notes, each of which shall be the joint and several obligation of two or more parties, all residents of this state, but no savings bank shall loan on personal security to one person more than three per centum of its deposits at the time of making such loan. No savings bank shall buy, or lend any money upon, any obligations on which only one person or firm shall be holden without taking

additional security for the same equivalent to the guaranty or endorsement of some other responsible party.

Sec. 37. If any street railway company, the bonds of which are a legal investment, prior to the passage of this act, shall fail, in any fiscal year subsequent to the passage of this act, to pay dividends equal to four per centum upon its outstanding capital stock, the bonds of such railway company shall cease to be a legal investment, until such company has complied with all the provisions of section twenty-two of this act.

Continuing Business.

An executor who continues a business in which the deceased was a partner becomes a co-partner and is liable personally for the debts of the partnership. *Alsop v. Mather*, 8 Conn. 584.

Trustees Protected if They Invest in Authorized Securities.

If trustees invest in the securities expressly allowed by statute they will, except under very extraordinary circumstances, be protected, no matter how the investment may result. *Clark v. Beers*, 61 Conn. 87.

Investment in Individual Name.

The law presumes that a trustee acts for the benefit of the estate and not in his individual capacity. To this extent the law presumes that a trustee acts for the estate, and he may be protected in his investments although they have been made in his own name. *Johnson v. Blackman*, 11 Conn. 342.

Corporate Stock.

Corporate stock can never be a suitable investment for a trustee unless the trust instrument specifically provides for such security. *Reed v. Reed*, 80 Conn. 401.

An executor who advised the widow of the testator to invest in certain stocks in which he was interested was guilty of a breach of confidence and the investment was illegal. *In re Potter's Appeal*, 56 Conn. 1.

But this rule must now be subject to the exception of Sec. 26 of the law governing investments by savings banks, permitting investment in bank and trust company stock.

Railroad Bonds.

A guardian has no right to invest funds of the ward in railroad bonds. *In re Potter's Appeal*, 56 Conn. 1. But the statutes now provide for investments in certain railroad and corporation bonds.

Trustee May Not Obtain Personal Benefit.

A trustee is not permitted to receive any personal gain from his administration of the trust fund or from his investments. *Looby v. Redmond*, 66 Conn. 444; *Campbell v. Campbell*, 8 Fed. Rep. 460.

Investment in Chattel Mortgage.

Trustees lent the fund upon notes secured by mortgage upon a vessel and certain corporate bonds. Such security was improper and inadequate. *New Haven Trust Company v. Doherty*, 75 Conn. 555.

Must Comply With Statutes.

In making a loan on security not authorized by statute, without exercising the care and prudence of an ordinary man, trustees act wrongfully and become personally liable for the loss. *New Haven Trust Company v. Doherty*, 75 Conn. 555.

Converting Existing Investments Into Authorized Securities.

A testator directed his executors to convert his real estate into money and to invest the proceeds in securities which were legal for savings banks. Certain stocks and bonds owned by the testator were first class securities paying high dividends, but they were not legal for savings banks. Sec. 255 of the General Statutes permits a trustee to retain securities received as a part of the trust fund unless the instrument under which such trust was created directs that a change of investment be made. In the present case the evident intention of the testator was to strengthen the security of the capital of the trust fund, and the trustees were bound to convert the securities into such as were legal for savings banks. *Curtis v. Osborn*, 79 Conn. 555.

Bonds Purchased at a Premium.

A trustee may purchase bonds which are legal for trust funds at a premium, but he should reserve enough out of the annual interest to meet the premium. Payment of premium is a payment from the capital of the estate. No part of the capital of the trust fund should go to life tenants. *Curtis v. Osborn*, 79 Conn. 555.

Personal Securities.

Unsecured notes are not Legal Investments for Trustees. *State v. Hunter*, 73 Conn. 435.

Due Diligence.

The fact that other persons bought similar security is not sufficient to relieve a trustee. He is bound to make diligent inquiry as to the character and safety of the investment. *State v. Washburn*, 67 Conn. 187.

Mortgages on Lands in Other States.

Loans on notes secured by mortgage of land in other states, and the purchase of such notes, cannot be regarded as *prima facie* a proper investment of trust funds. If a trustee thus invests the funds he must prove not only good faith, but also due diligence in ascertaining the safety of the particular investment. *Clark v. Beers*, 61 Conn. 87, 89; *State v. Washburn*, 67 Conn. 187.

An executor who advised the widow, who was also guardian of a minor, to invest in mortgages on western lands was guilty of breach of trust. *In re Potter's Appeal*, 56 Conn. 1.

Retaining Investments.

A conservator may keep his ward's estate invested in the securities received by him unless otherwise ordered by the court of probate and be exempt from liability by reason of depreciation of such securities. If he makes a change in the investment the burden is upon him to prove a reasonable cause for such a change. *State v. Washburn*, 67 Conn. 187; Gen. Statutes, Sec. 255.

Damages.

As to measure of damages for improper investment see *State v. Washburn*, 67 Conn. 187; Gen. Statutes, Sec. 496.

DELAWARE.

TRUSTEES GENERALLY.

Laws of 1909, Chapter 226.

(With Amendments to 1914.)

Excepting where instruments creating trusts prescribe otherwise, trustees named in wills or appointed by the Chancellor, may hereafter invest the funds of their trusts in securities of the following classes and kinds, viz.:

(a) Stocks and bonds and interest-bearing obligations of the United States, for which the faith and credit of the United States are pledged to provide for the payment of the interest and principal thereof, including the bonds of the District of Columbia;

(b) Stocks and bonds and interest-bearing obligations of the State of Delaware and of any other state of the United States, issued pursuant to the authority of the law relating thereto;

(c) Stocks and bonds of any county of the State of Delaware and of any county of any state of the United States, issued pursuant to the authority of the law relating thereto;

(d) Stocks and bonds of any school district of the State of Delaware, issued for school purposes and pursuant to the authority of the law relating thereto;

(e) Stocks and bonds and interest-bearing obligations of any incorporated city or town of the State of Delaware or of any of the states of the United States, issued pursuant to the authority of the law relating thereto, for the payment of which the faith and credit of the municipality issuing the same are pledged;

(f) Bonds of either natural persons or corporations, secured by first mortgage on productive real estate, free from prior incumbrances;

(g) Bonds of railroad, transportation and public service corporations, secured by mortgage upon the property, plants and systems of such corporations;

(h) Collateral trust bonds of railroad, transportation and public service corporations, where the same are secured by guaranteed underlying stocks (or bonds secured thereby), where no default in the payment of installments or principal or of interest for more than ninety days after the same has become due, has occurred in connection therewith, within a period of ten years preceding the investment of trust funds therein;

(i) Car trust certificates and equipment trust bonds;

(j) Underlying securities of railroad, transportation and public service corporations, bearing guaranteed dividends, where no default in dividends has occurred after the guaranty;

(k) Such other securities as may be approved by the Chancellor.

By the laws of 1911, this section was amended by inserting a proviso that, "the foregoing specification of classes of securities in which trustees may invest the funds of their estates, shall not be construed to relieve said trustees from the duty of exercising due care in the investment of said funds."

Continuing Investments. Sec. 1, Ch. 115, Laws of 1895.—In case the guardian of any minor, or the trustee under any will or any succeeding trustee shall be entitled to receive any legacy or distributive share from the executor or administrator of any testator or intestate, such guardian, with the approval of the Orphan's Court, or any judge thereof, or such trustee, with the approval of the Chancellor, may receive from such executor or administrator in payment of whole or any part of such legacy or distributive share in specie by assignment, transfer or delivery, according to the nature and character of the property, to be made by the executor or administrator of any testator or intestate to such guardian or trustee of any stocks, bonds, judgments, mortgages, investments or other personal property held or owned by such testator or intestate at the time of his death at the

appraised value thereof and such assignment, transfer or delivery shall vest the legal title to any such investments or property in such guardian and trustee. And such guardian or trustee shall not be accountable or liable for any loss or depreciation in the value of any such stock, bonds, judgments, mortgages, investments or other personal property so received and held by him, unless the same shall occur through the culpable act, neglect or default of such guardian or trustee. Provided, that nothing herein contained shall be deemed to limit or restrict the right of such guardian or trustee at any time to alter or change the investment of such legacy or distributive share, or any part thereof, with the approval as aforesaid.

Guardian.—Upon application of a guardian, the court (Orphan's Court) may direct money in his hands to be invested by him, as guardian, in stocks in this state, or funded debt of the United States, to be designated by the court, or to be lent by him, as guardian, on security to be approved by the court, for periods not exceeding a year and one month; which loan may be continued, on his application, from time to time, for the same period; and a guardian, faithfully following the directions of the court, shall not be liable for the failure of the security, or any loss resulting from any such investment: Provided, he shall have used due and reasonable care and diligence to prevent the same.

If money cannot be so lent, or invested, the guardian shall not be charged with interest, unless he derives benefit from, or uses the money. Laws of Delaware, Ch. 96, Sec. 18.

Power of Orphan's Court.

The Orphan's Court in Delaware has the power to determine the amount and character of investment of a sum to be invested to secure an annuity for a widow who has relinquished her right of dower. *Green v. Saulsbury*, 6 Del. Ch. 371.

Trustee May Not Use Trust Fund For His Own Benefit.

Although a trustee may not use trust funds in his own business or for his own profit, the mere fact that he had such an investment under consideration is not ground for his removal. *Massey v. Stout*, 4 Del. Ch. 274; *Downs v. Rickards*, 4 Del. Ch. 416.

May Not Purchase Trust Property.

The principle upon which the disqualification of the trustee to buy the trust estate rests is a broad one, and extends as well to sales conducted by others as to those conducted by himself. *Downs v. Rickards* 4 Del. Ch. 416; *Willey v. Tindal*, 5 Del. Ch. 194.

Liability of Co-Administrators.

One co-administrator is not liable for the separate acts of the other who wasted the estate. *State v. Belin & Breck*, 5 Del. 400.

Deposit in Bank in Own Name.

If an executor, administrator or trustee deposits trust moneys in a bank in his own private name, or mingles the trust moneys with his own moneys, and the bank fails, he is personally liable and must bear the loss. *Allen v. Leach*, 7 Del. Ch. 83.

Leaving Money in Bank.

If a trustee leaves trust moneys in a bank for a longer time than is necessary for carrying out the purposes of the will or the administration of the trust, and the bank fails, he is personally liable for the loss. *Allen v. Leach*, 7 Del. Ch. 83.

Even if the money is not lost, the trustee is chargeable with interest. *Allen v. Leach*, 7 Del. Ch. 83.

Buying in at Mortgage Foreclosure.

The Court of Chancery has power to authorize a trustee to buy in property at his own mortgage foreclosure sale. This may be done when it is clearly to the interest of the beneficiary, although the trust instrument did not authorize an investment in real estate. *In re Bellah*, 8 Del. Ch. 59; *In re Baker*, 8 Del. Ch. 355.

DISTRICT OF COLUMBIA.

Code of 1911.

(With Amendments to 1914.)

Sec. 369. Investment of Funds.—Whenever, under the provision of a will, it shall be necessary for an executor or an administrator *cum testamento annexo* to retain in his hands the personal estate or any part thereof after all just claims are discharged, as where money or some other thing is directed to be paid at a distant period or upon a contingency, the probate court shall have the power, on the application of such executor or administrator or of a party interested, to decree or give directions in relation thereto; and it shall be the duty of said executor or administrator to apply to the said probate court, and the said court shall have full power to decree or direct what part of the personal estate shall be retained or appropriated for the purpose and in what manner it shall be disposed of, and the legacy or benefit intended by the will shall be secured to the person to be entitled at a future period or contingency, and how the necessary part of the personal estate to be appropriated for the purpose shall be prevented from lying dead or being unproductive, and how it shall be applied, agreeable to the intent of the will or the construction of the law, in case the contingency shall not take place.

Purchase of Trust Property by Trustee.

A trustee cannot become the purchaser of trust property directly or indirectly unless he can show absolute good faith and honesty in the transaction. *Stephens v. Beall*, 1 Mac A. 38; *Beckett v. Tyler*, 3 Mac A. 319.

A purchase of the trust property by a trustee for his own use is not absolutely void, but voidable. It may be ratified by the parties. *Quirk v. Liebert*, 12 Appeal 394; *Hammond v. Hopkins*, 143 U. S. 224.

Must Act in Good Faith.

It is a settled rule that the trustee of a fund for management and investment must act in good faith and in the exercise of a sound discretion. *Johns v. Herbert*, 2 Appeal 485.

Sale of Non-Productive Securities.

A testator left a trust estate consisting of bonds of the Chesapeake and Ohio Canal Company. The trustee retained the bonds, although they had produced no interest for a number of years. So far as the principal was concerned, however, they were considered safe. The mere fact that the trustee continued to hold the bonds after he had been requested by the life beneficiary to sell was not sufficient to render him liable for their depreciation in value. A trustee's conduct is to be judged by the situation as it appeared at the time of the transaction. *Johns v. Herbert*, 2 Appeal 485.

Power to Sell.

The power of a trustee to sell stocks and securities is not to be implied. *Johns v. Herbert*, 2 Appeal 485; *Duncan v. Jandon*, 15 Wall. 165.

Duty to Apply to Court For a Change of Investment.

Whenever a trustee has reason to believe that an investment may be unsafe or unprofitable, and in the absence of express authority in the trust instrument, he should apply to the court promptly for leave to change the investment. *Johns v. Herbert*, 2 Appeal 485; *Mades v. Miller*, 2 Appeal 455.

Duty to Invest.

When money remains in the hands of trustees beyond a reasonable time, the burden is upon them to explain and justify their failure to invest it, in order to relieve themselves from being made to account for the interest thereon. *Mades v. Miller*, 2 Appeal 455.

Mingling Trust Funds.

Trustees who mingle trust funds with their own or have made use of the money themselves, or have been negligent in not paying the money over or in not investing it so as to render it productive, are chargeable with interest. *Mades v. Miller*, 2 Appeal 455.

Purchase at His Own Sale.

A trustee may purchase at a judicial sale brought about by a third party, which he had taken no part in procuring, and over which he could not have had control. *Starkweather v. Jenner*, 27 Appeal 348; *Twin-Lick Oil Co. v. Marbury*, 91 U. S. 587.

FLORIDA.

TRUSTEES GENERALLY.

Laws of 1906.

(With Amendments to 1914.)

Sec. 2717. Deposit in Bank—Bank Stock.—Executors, administrators, trustees or guardians may deposit the funds held by them with such company (Banking Company) or invest the same in its capital stock for the benefit of the estate of their testators, intestates, trusts or wards.

Sec. 2433. Executors and Administrators.—Executors and administrators may, by leave of the court, retain in their possession the money of any minor, paying for the same lawful interest, or shall, under the direction of the court, put out the moneys of minors at interest, upon such mortgage security, or on United States or state bonds, or stocks, as said court shall allow, and if such security be taken *bona fide* and without fraud, and shall prove insufficient, it shall be the loss of the minor; but if no good security can be found on which to put out the said money at interest, the said executor or administrator shall only be responsible for the principal; and at the end of each year the interest due, if not paid, shall be made principal; and when the executor or administrator retains the money on interest himself, the same rule shall be observed, the interest being added to the principal annually; but executors and administrators shall not be liable to pay interest, except on the surplus of the estate of the deceased remaining in their hands and unemployed as aforesaid, after the settlement of their accounts.

Sec. 2612. Guardians. Investment of Moneys.—Guardians may by leave of the court retain in their possession the money of any infant, paying for the same lawful interest, or shall under the direction of the court put out the money

of the infant at interest upon such mortgage security, or in United States bonds or state bonds of any state, as said court shall direct, and if such security be taken *bona fide* and without fraud, and shall prove insufficient, it shall be the loss of the infant; but if no good security can be found on which to put out the said money at interest, said guardian shall only be responsible for the principal, but the day of payment of that money so put out at interest on private security at any time shall not exceed one year from the date of the obligation or other security given for the same and also at the end of each year the interest due if not paid shall be made principal. When the guardian retains the money on interest himself the same rule shall be observed, the interest being added to the principal annually, but guardians shall not be liable to pay interest except on the surplus of the estate remaining in their hands and unemployed as aforesaid, after the settlement of their accounts.

Continuing Business, Laws of 1911, Ch. 6215. Sec. 1.—

In all cases where a person shall have died while engaged in any trade or business, the Circuit Courts of this state are empowered to authorize the curator, administrator or executor of the estate of such deceased person to continue and carry on such trade or business for a reasonable time, under the supervision of such court and to require such security or additional security of such curator, administrator or executor, as the Circuit Judge may deem proper.

Sec. 2. Before any order shall be made authorizing the continuance of the trade or business of the deceased person, as provided for in Section 1 of this Act, the curator, administrator or executor of such estate by a verified petition, shall affirmatively and clearly allege and set forth sufficient facts to make it appear to the court that to prevent great loss to the estate it is necessary to continue such trade or business of the deceased.

TRUST COMPANIES.

Laws of 1911, Ch. 6155.

(With Amendments to 1914.)

Investment of Trust Funds.—Part of Section 4, relating to investment of trust funds by trust companies, provides that no trust company shall have power to invest such funds or to make loans upon bills, notes or other evidences of debt, except to a county, city, town, municipality and county or school boards of this state, unless the same shall be secured by first mortgage upon real estate not to exceed sixty per centum of the value of such real estate, or by other approved securities, the actual value of which other approved securities shall at all times exceed by at least twenty per centum of the amount loaned on the same. And no moneys received in trust shall be mingled with investments of capital stock or other moneys or property belonging to such corporation.

Statutes Mandatory.

It will be observed that the statute not only restricts the powers of an executor, but as a further protection to the interests of minors requires the sanction and approval of the court of probate. *Moore v. Hamilton*, 4 Fla. 112.

Section 2433 was intended to embrace all money belonging to an estate being in process of administration. The provision of the statute requiring loans to be secured by mortgage is mandatory, and if an executor disregards the requirements and makes a loan upon personal security he does so at his peril. *Moore v. Hamilton*, 4 Fla. 112; *Moore v. Felkel*, 7 Fla. 44.

May Not Invest in Personal Security.

Since the statutes of Florida are mandatory, it follows that a trustee may not invest the trust fund in personal security. *Moore v. Hamilton*, 4 Fla. 112.

Failure to Obtain Approval of Judge of Probate.

Investments which are not authorized by law or which have not been approved by the judge of probate may be accepted or rejected by the beneficiaries. *Sanderson's Adm'rs. v. Sanderson*, 17 Fla. 820.

Trustee May Not Purchase at Sale of Estate.

A trustee may not purchase at a sale of the estate of the beneficiary although the sale is at public auction. The beneficiary may

set aside the sale whether made in good faith or not. *Bellamy v. Bellamy's Admr.*, 6 Fla. 62.

Trustee May Not Profit from the Estate.

A trustee may not invest for his own interest or profit from the estate either directly or indirectly. *Lainhart v. Burr*, 49 Fla. 315.

Remedy of Beneficiary in Case of Unauthorized Investment.

Where a guardian invests in securities which are doubtful and not sanctioned by the court, a beneficiary may refuse to receive the securities and may rely on the bond. *May v. May*, 19 Fla. 373.

Deposit in Bank.

A trustee who deposits money in a bank and permits it to remain uninvested is chargeable with interest, unless it appears that no safe security could be found. *Eppinger v. Canepa*, 20 Fla. 262.

GEORGIA.

TRUSTEES GENERALLY.

Code of 1911.

(With Amendments to 1914.)

Sec. 3758. Trustee to Report Sale and Reinvestment.—In all cases where a judge in term by order, or by decree based on the verdict of a jury, or by order in vacation, shall order or allow any trust property to be sold, it shall be the duty of the court, or judge signing the order, to require the trustee, within sixty days from the date of said order, to file and have recorded in the office of the clerk of the superior court of the county having jurisdiction of said trust property, a written report on oath of his actings and doings under said order, with the name of the purchaser of the property, the price at which the same was sold, together with a description of the property in which the proceeds have been reinvested, the price paid, and the name of the person from whom the same was bought, if said proceeds have been reinvested, and if not, the reason therefor.

If the proceeds have been reinvested, the judge shall pass such order as to him shall seem best, confirming the same or ordering a new investment. If said proceeds have not been reinvested, the judge shall issue such order as shall be necessary, and require said trustee to report within sixty days from said last-named order, as hereinbefore required.

Sec. 3759. Penalty for Failure to Report.—In case any trustee or other person making a sale as herein provided shall fail, neglect, or refuse to make said report and reinvestment as herein provided, the judge shall cause a rule to be issued against said trustee or other person making said sale, returnable at a time therein stated, and upon the hearing thereof shall compel the trustee to reinvest said funds under the

direction of the court, upon pain of being attached for contempt and committed until the same is done.

Sec. 3760. Purchasers shall in no case be required to see to a reinvestment of any proceeds of such sales; but guardians *ad litem* and all other persons *sui juris*, parties to the proceedings in which leave to sell has been granted, shall be bound to see to said reinvestment and report, or, upon the failure of the trustee to reinvest and report, shall be bound to have the failure to obey said order called to the attention of the court for its action.

Sec. 3763. Investments.—Any trustee holding trust funds may invest the same in stocks, bonds, or other securities issued by this state, making a true return of the price paid and time of purchase. Such investments shall be free from taxation so long as held for the trust estate. Any other investments of trust funds must be made under an order of the superior court, either in term or granted by the judge in vacation, or else at the risk of the trustee.

Sec. 3764. May Invest in State Securities at Less Than Seven Per Cent.—Executors, administrators, guardians and trustees may invest trust funds in stocks, bonds and other securities issued by this state, bearing a lower rate of interest than seven per cent per annum, and shall, in the settlement of their accounts on the funds so invested, be chargeable with no greater interest than that received from the state: Provided, that such executor, administrator, guardian or trustee shall, within thirty days after such investment, make a return to the Ordinary of the amount and character of the bonds purchased and the price paid.

Sec. 3765. Investments in Validated County or Municipal Bonds.—Executors, administrators, guardians and trustees are authorized to invest trust funds in any county or municipal bonds of this state, which have been validated as required by law for the validation of county and municipal bonds, upon the same terms and conditions as they are now authorized to invest trust funds in state bonds and securities.

Sec. 4011. Investments by Administrator.—When from any cause an administrator is compelled to hold the funds of

the estate in his hands, he is authorized to invest the same in stocks, bonds or other securities issued by this state, or (by leave of the Ordinary) in bonds issued by the proper authorities of the cities of Savannah and Augusta. In such case he shall, within twelve months thereafter, make a legal return thereof, in which shall be set forth the price paid, the time of the purchase, and the name of the seller. If any executor or trustee has in his hands money as the separate estate of a married woman, absolutely or for life, he may, under the direction of the superior court, invest such funds in land.

Sec. 4012. May Continue Business of Deceased.—An administrator may exercise his discretion in continuing the business of his intestate until the expiration of the current year. Up to the time of sale or distribution the administrator must manage and dispose of the property of the estate for the best interest of the estate.

Sec. 4008. Guardians and Trustees May Invest in Land.—Guardians, trustees, executors and administrators are authorized to invest funds held by them as such guardians, trustees, executors and administrators in lands: Provided an order to that effect be first obtained from the judge of the superior court, who is authorized to consider and pass upon such applications either in term time or vacation.

Changing Investments.

A trustee may change the investments of the estate where it is manifestly for the interest of the beneficiaries, but if he does so without an order of court it is at his own risk, and he will be liable for the consequences. *Cornwise v. Bourgum*, 2 Ga. Dec. 15.

But where a trustee changes the investment with the consent of the beneficiary who is of legal age, he is not liable for loss. *Campbell v. Miller*, 38 Ga. 304.

May Not Reap Personal Benefit from the Estate.

Where power is given a trustee to sell and reinvest, he must invest for the use of the beneficiary alone and not for any personal benefit. *Crowley v. Crouch*, 114 Ga. 135.

Statute Construed.

Section 2304 (3763) of the revised code provides that "any trustee holding trust funds may invest the same in stocks, bonds or other

securities issued by this state, making a true return of the price paid at the time of purchase. Such investments shall be held free from taxation so long as held for the trust estate. Any other investments of trust funds must be made under an order of the superior court within the term, or granted by the judge in vacation, or else at the risk of the trustee." This section of the statute was passed in 1863 to aid the state in raising war money and was held to apply to guardians as well as other trustees. *Brown v. Wright*, 39 Ga. 101.

Investment in Trust Company Stock.

Although the statute of Georgia does not authorize investment of trust funds in corporate stock, a trust company which, upon petition of the beneficiary, invests trust funds in its own stock and under an order of a court of chancery, is protected against loss. Since there was no fraud, it was immaterial whether an officer of the company advised the beneficiary as to its condition. *Haddock v. Bank*, 66 Ga. 496.

Confederate Bonds.

Investments in confederate bonds were held to be legal. *Walker v. Walker*, 66 Ga. 253.

Trustee Protected Where He Exercises Good Faith.

When a trustee is given discretion to lend money or not as he may deem proper, and lends money to persons solvent at the time, using such discretion and diligence as he exercises in his own business, he should not be held responsible for loss. *Walker v. Walker*, 42 Ga. 135.

Ratification of Illegal Investment.

Beneficiaries may ratify an illegal investment by a trustee, but they cannot repudiate part of the investment, and at the same time obtain the fruits of another part. *Howard v. Cassels*, 105 Ga. 412.

Personal Securities.

The duty of the trustee being to preserve the estate, he may not take an unsecured note even from the husband of the beneficiary and his partner. *Kent v. Plumb*, 57 Ga. 207.

Trustee May Not Purchase Trust Property.

Trustees may not deal with each other in the trust property, neither may they sell any portion of the trust estate to another trustee unless the consent of the beneficiaries be obtained. *Cleghorn v. Love*, 24 Ga. 591.

HAWAII.

TRUST COMPANIES.

Laws of 1905.

(With Amendments to 1914.)

Sec. 6. All investments of money received by any trust company upon trust account, or in any fiduciary capacity, shall be at its sole risk, and for all losses of such money the capital stock, property and effects of such corporation shall be absolutely liable, unless the investments are such as the courts recognize as proper when made by an individual acting as trustee or in like fiduciary capacity; or are such as are permitted in and by the instrument or words creating or defining the trust.

Guardian.—There are no specific provisions as to the investment of the ward's estate by a guardian. The statutes provide that the guardian must manage the estate for the benefit of the ward and that in case of a necessity for sale and reinvestment, the guardian shall obtain an order of court and shall invest the proceeds in the best possible manner. Laws of 1905, Secs. 2314, 2326-2328.

Must Follow Directions of Trust Instrument.

It is the duty of trustees to follow the directions of the trust instrument. In re Estate of Lunalilo, 4 Ha. 162.

Trust Funds Must Be Kept Separate.

Trust funds should not be merged in the private business of trustees, but should be kept separate and invested in the best securities the country affords. In re Estate of Neville, 4 Ha. 289.

Good Faith and Prudence.

No statutory provision limiting the investment of trust funds exists in the Hawaiian Islands. A trustee is not liable for loss if he acts with honesty, prudence and faithfulness, and exercises sound discretion. In re Estate of Banning, 9 Ha. 453.

Corporate Bonds.

Where the agent of a trustee invested in corporate bonds, the trustee was held responsible for loss, because he had delegated his power. The trustee was not criticised by the court for the character of the investment. In re Estate of Banning, 9 Ha. 453.

Trustees are not limited to public securities and mortgages on real estate. They may invest in corporate bonds where such bonds are secured by mortgages on real and personal property and are regarded by prudent men as safe. Guardianship of Parker, 14 Ha. 347.

IDAHO.

TRUSTEES GENERALLY.

Code of 1912.

(With Amendments to 1914.)

Sec. 5605. Executors and Administrators.—Pending the settlement of any estate, on the petition of any party interested therein, and upon good cause shown therefor, the court may order any moneys in the hands of the executors or administrators to be invested for the benefit of the estate in securities of the United States or of this state. Such order can only be made after publication of notice of the petition in some newspaper to be designated by the court or judge thereof.

Guardian.—Section 5800, of the code of Idaho for 1912, referring to the duty of a guardian, provides “if the estate is sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.”

Sale For Investment by Guardian.—Section 5798 provides that “when it appears to the satisfaction of the court, upon the petition of the guardian, that, for the benefit of his ward, his real estate or some part thereof should be sold and the proceeds thereof put out at interest, or invested in some productive stock, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose, upon obtaining an order therefor.”

Sec. 2965. This section provides that “any executor, administrator, guardian or trustee, having the custody or control of any bonds, stocks, securities or other valuables belonging to others, shall be authorized to deposit the same for safe keep-

ing with said companies." (Guaranty, title and trust companies.)

Sec. 5582. This section provides that an executor or administrator shall not make profit by the increase, nor suffer loss by the decrease, or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than the appraisement, and if any is sold for less than the appraisement, he is not responsible for the loss, if the sale has been justly made.

Note.—There are no important decisions by the higher courts of Idaho, but the statutes are taken largely from California, and it is fair to assume that the California rules prevail. See also Part I herein.

ILLINOIS.

TRUST COMPANIES.

Laws of 1909.

(With Amendments to 1914.)

Trust Companies Not Required to Give Bond—Responsibility for Investments.—The laws of 1909 provide that a trust company shall not be required to give any bond, or security in case of any appointment hereinbefore provided for, except as hereinafter provided, but shall be responsible for all investments which shall be made by it of the funds which may be entrusted to it for investments by such court and shall be further liable as natural persons in like positions now are, and as hereinafter provided. The amount of money which any such corporation shall have on deposit at any time shall not exceed ten times the amount of its paid up capital and surplus, and its outstanding loans shall not at any time exceed said amount.

TRUSTEES GENERALLY.

Laws of 1905.

Investments of trust funds by trustees may, when not otherwise provided by the will, deed, decree, gift, grant, or other instrument creating or fixing the respective trust, be in the bonds of the United States, or of any of the states of the United States, or in the first mortgages upon real estate in any state, or in the bonds of any county, city or municipality in any state, or in the first mortgage bonds of any corporation of any state upon which no default in payment of interest shall have occurred, for a period of five years, but no trustee shall be authorized by this act to invest trust funds in any bonds in which cautious and intelligent persons do not invest their own money, and any trustee may continue to hold any in-

vestment received by him under the trust, or any increase thereof.

GUARDIANS.

Revised Statutes of 1912.

Chapter 64, Section 22. Investment of Ward's Money.—

It shall be the duty of the guardian to put and keep his ward's money at interest upon security to be approved by the court, or by investing, on approval of the court, the same in United States bonds, or in the bonds of any county or city which are not issued in aid of railroads, and where the laws do not permit said counties or cities to become indebted in excess of five per cent of the assessed valuation of the property for taxation therein, and where the total indebtedness of such county or city does not exceed five per cent of the assessed valuation of property for taxation at the time of such investment. Personal security may be taken for loans not exceeding one hundred dollars. Loans upon real estate shall be secured by first mortgage thereon and not to exceed one-half the value thereof. No mortgage loan shall be made for a longer time than five years nor beyond the minority of the ward: Provided, the same may be extended from year to year without the approval of the court. The guardian shall be chargeable with interest upon any money which he shall wrongfully or negligently allow to remain in his hands uninvested after same might have been invested.

Investments in Other States.

It seems that if a trustee is given broad powers of investment, the Illinois courts recognize his right to invest in securities outside of the state. Section 1 of the Statute of 1905, concerning investments by trustees, confers power to invest in securities outside of the state, and this appears to authorize investments beyond the borders of the state, not only in real estate mortgages but in real estate. *Merchants Loan & Trust Co. v. Northern Trust Co.*, 250 Ill. 86.

Trustee Liable if He Invests in His Own Name.

A trustee who invests trust funds in his own name and not in his name as trustee is liable for a breach of trust, regardless of his intention. *White v. Sherman*, 168 Ill. 589.

Business or Trade.

A trustee has no power to use trust funds in operating a coal mine. *Butler v. Butler*, 164 Ill. 171.

Interest.

A trustee, who is guilty of a breach of trust, is liable for interest, with annual rests. *White v. Sherman*, 168 Ill. 589.

Power to Mortgage.

A trustee who is given no authority to sell or convey the property by the trust instrument has no power to mortgage. *Summers v. Iligley*, 191 Ill. 193.

Power to Lease.

A trustee who is given power to manage, rent and lease property, has power to execute ordinary leases, but not to sell the property or make leases which amount to a sale, such as a lease to operate for oil or gas. *Ohio Oil Co. v. Daughetee*, 240 Ill. 361.

Corporate Stock.

Where a trustee is given broad power as to choice of investments and the creator of the trust has invested in stock of private corporations, investments in such stock may be made by the trustee. *Merchants Loan & Trust Co. v. Northern Trust Co.*, 250 Ill. 86.

A trustee should not invest trust funds in the stock of a private corporation. *Penn v. Folger*, 182 Ill. 76.

A trustee may not invest in speculative railway stocks, or stocks of private corporations. *Sherman v. White*, 62 Ill. App. 271; *Aff'd.*, 168 Ill. 589.

Investment in a Partnership.

An administrator with the will annexed who held national bank stock in trust had no authority to enter into an agreement to change the bank into a partnership and continue the investment in this form. As a general rule a trustee should not make changes in investments unless ordered by a court of chancery. *Penn v. Folger*, 182 Ill. 76.

Continuing Investments Made by Creator of Trust.

The fact that the creator of the trust has invested in certain securities may well be taken into consideration when the trustees are required to exercise their judgment. *Merchants Loan & Trust Co. v. Northern Trust Co.*, 250 Ill. 86.

Acquiescence by Beneficiary in Investments.

Where the beneficiaries are of age they may acquiesce in an investment which is not legal for a trustee, but if a trustee would avail himself of this defense, he must show that all of the details of the investment were fully explained; that the beneficiaries understood the nature of the investment and that they gave their consent to it. Failure of the beneficiaries to object to general reports or statements made by the trustee does not constitute acquiescence. *Sherman v. White*, 62 Ill. App. 271; *Aff'd*, 168 Ill. 589.

INDIANA.

Statutes of 1908.

(With Amendments to 1914.)

Sec. 4037. Proceeds of Sale of Trust Estate After an Order of Court.—It shall be the duty of the trustee to safely invest the money realized from such sale of said trust property upon good real estate mortgage security, preserving the principal sum from loss or diminution, and paying over to the *cestuis que trust* the interest upon said principal sum during the continuance of the trust.

Sec. 4953. Sixth. Loan and Deposit Companies Acting as Trustee.—The directors of any such corporation shall have discretionary power to invest all moneys received by it on deposit or in trust in any such personal securities as are not hereinafter expressly prohibited, and it shall be held responsible to the owners, or *cestuis que trust*, of such moneys, for the validity, regularity, quality, value and genuineness of all such investments and securities at the time the said investments are so made, and for the safe keeping of the evidences and securities thereof; but if any special direction, agreement or trust is imposed upon, made or conferred in and by the order, judgment or decree of any court, or by the terms and conditions of any last will and testament, or other document, contract, deed, conveyance, or other written instrument, as to the particular manner in which, or the particular class or kinds of security, funds or property, whether real or personal, the same shall be invested in, then the said corporation shall follow and carry out such order, judgment, decree or other appointment, contract, deed, conveyance or other written instrument, and in such case such company shall not be held liable or responsible for any loss, damage or injury which may occur or be incurred by any person or *cestuis que trust* by reason of its performance of such trust as aforesaid.

Deposits in Bank.

A trustee is not liable merely because he deposits trust funds in a private bank which fails or because the bank is weak, unless he has knowledge of the bank's condition or could have learned of the condition by the exercise of ordinary care and diligence. *Norwood, Admr., v. Harness*, 98 Ind. 134.

Deposit in Trustee's Individual Name.

A trustee who deposits trust funds in a bank in his own name is liable for any loss which occurs by reason of the failure of the bank. The moment he takes the money or property as his own he becomes liable. *Fletcher v. Sharpe*, 108 Ind. 276; *Corya v. Corya*, 119 Ind. 593; *Gilbert v. Welsch*, 75 Ind. 557; *Slauter v. Favorite*, 107 Ind. 291.

Trustee May Not Profit From the Estate.

The fiduciary relation of an executor or administrator extends to all the legatees, and he cannot purchase the legacy of any one either for his benefit or for the benefit of the other legatees. *Goodwin v. Goodwin Ex'r.*, 48 Ind. 584.

A trustee has no right to use the assets in his possession for his personal benefit, and one who purchases from him with notice acquires no equitable rights. One who knowingly receives trust money in satisfaction of the individual debt of the trustee is a party to the fraud. *Nugent v. Laduke*, 87 Ind. 482; *Wallace v. Brown*, 41 Ind. 436; *Fleece v. Jones*, 71 Ind. 340; *Rogers v. Zook*, 86 Ind. 237.

Corporate Stock.

An investment in corporate stock is nothing more than an investment in mere personal security of fluctuating and uncertain character, and when not made under the direction of some competent authority is a well recognized violation of the duty of a trustee. *Tucker v. State ex rel. Hart*, 72 Ind. 242.

Bank Stock.

Where a will directs that a legacy be put at interest, the meaning is that the fund be loaned at interest or invested in interest-bearing security. It cannot properly be said that shares of capital stock in a bank are interest-bearing securities. *Gilbert v. Welsch*, 75 Ind. 557.

Loan to Relative.

It is not fraud *per se* for a trustee to loan trust funds to his own son, if the loan is legally secured. *Caldwell v. Boyd*, 109 Ind. 447.

Transactions Between Trustee and Beneficiary.

Transactions between beneficiary and trustee, in which the trustee gains an advantage, are looked upon with suspicion. *Teegarden v. Lewis*, 145 Ind. 98.

Continuing Partnership.

In the absence of express conditions to the contrary in the articles of agreement, the death of one of the partners works a dissolution of the partnership. Consequently, the interest of the deceased in the partnership cannot be continued as an investment unless there is express permission for it either in the articles of partnership or in the trust instrument. *Rand v. Wright*, 141 Ind. 226.

Individual Credit.

Loans made on the credit of individuals or firms without security, or with doubtful security, are ordinarily at the risk of the guardian. *Line v. Lawder*, 122 Ind. 548.

Must Keep Funds Separate.

A guardian is not an insurer of investments made by him, but it is his duty to keep the trust estate separate from his own funds and to act in good faith and to exercise the prudence of men diligent in their own business. *Line v. Lawder*, 122 Ind. 548.

Duty to Have Husband and Wife Join in Mortgage.

It is the duty of the trustee to see that husband and wife both join in a mortgage. Otherwise he must show the husband's estate has adequate security. *Slauter v. Favorite*, 107 Ind. 291.

Second Mortgages.

A mortgage on real estate subject to prior liens or encumbrances is not a safe investment. *Shuey v. Latta*, 90 Ind. 136.

Guardian.

Section 3068, of the statutes, gives a guardian the power to "manage the estate for the best interests of the ward," and section 3069 provides that the proper court may order a change of investments. There appears to be no definite provision as to the securities in which a guardian may invest.

Duty to Invest.

It is the duty of a guardian to invest the estate of the ward which comes into his hands, and he must use due care in making investments. *State v. Saunders*, 62 Ind. 562.

Diligence in Examining Title.

Ten days before making a loan of his ward's money the guardian examined the title to property and found it clear. The borrower was a man of high financial reputation and it was not known at the time that he was heavily in debt. After the examination of title by the guardian and before he secured his mortgage, the owner placed a prior mortgage upon the property. Under the circumstances the guardian was not negligent. *Slauter v. Favorite*, 107 Ind. 291.

IOWA.

Code of 1897.

(With Amendments to 1914.)

Sec. 364. Investments—In What to be Made.—Where investments of funds are to be made, including those to be made by executors, administrators, trustees and guardians, and no mode of investment is pointed out by statute, they may be made in the stocks or bonds of this state, or of those of the United States, or in bond or mortgage upon real property of the clear, unencumbered value of twice the investment, or under order of court in bonds issued by or under the direction of cities, towns, counties, school or drainage districts of this state. As amended by laws of 1913.

Sec. 365. Security Not to be Changed Without Order.—When such investment is made by order of any court, the security shall in no case be discharged, impaired or transferred without an order of the court to that effect, entered on the minutes thereof.

Sec. 366. Duty of Investor Under Order.—The clerk or other person appointed in such cases to make the investment must receive all moneys as they become due thereon, and apply or reinvest the same under the direction of the court, unless the court appoints some other person to do such acts.

Sec. 3337. Business Continued.—The court, in its discretion, may authorize an executor or administrator to continue the prosecution of any business in which the deceased was engaged at the time of his death, in order to wind up his affairs with greater advantage, but such authority shall not exempt him from returning a full inventory and appraisal, and making reports, as in other cases.

TRUST COMPANIES.

By Chapter 152 of the Laws of 1913 the right to act as trustees was conferred upon trust companies and banks. The law requires that trust funds be kept separate and that every such corporation, when acting as executor, administrator, guardian, or trustee, shall have the same rights and be subject to the same laws as an individual acting in the same capacity.

Deposit in Bank Pending Investment.

A trustee who deposits trust funds in a reputable bank is not liable for loss which may occur by failure of the bank. But the deposit must not be in his individual name or mingled with other funds. *Officer v. Officer*, 120 Ia. 389.

Time Allowed for Investment.

Fifteen months is too long a time for a fund to remain on deposit. It is the duty of the trustee to keep the funds properly invested. *Garner v. Hendry*, 95 Ia. 44.

Order of Court as a Protection.

Even where the trustee is given discretion as to the investments, the courts may make such an order as will protect the trustee. *Dickey v. Barnstable*, 122 Ia. 572.

Duty of Guardian to Obtain Order of Court.

Section 3200 of the Iowa Code requires that guardians must manage the affairs of the ward "under proper orders of the court or judge thereof." The statute seems to be controlling even where the guardian has invested in mortgage security. The investment is voidable until approved by a court order. The guardian cannot, as at common law, loan his ward's money, or invest it without such an order. *Foteaux v. Lepage*, 6 Ia. 123; *Garner v. Hendry*, 95 Ia. 44; *Reed v. Lane*, 96 Ia. 454; *Easton v. Somerville*, 111 Ia. 164; *McIntire v. Bailey*, 133 Ia. 418.

Guardian May Not Loan to Himself.

A guardian may not loan his ward's money to himself. *McReynolds v. Anderson*, 69 Ia. 208.

Rate of Interest.

Six per cent interest is all that should be allowed. Where a trustee has made more, he will be charged therewith; where nothing is

shown, he will be charged with the highest legal rate. *Foteaux v. Lepage*, 6 Ia. 123.

May Not Mingle Trust Funds with His Own.

Mingling of trust funds with his own amounts to a conversion by the trustee and his bondsmen are liable. *McIntire v. Bailey*, 133 Ia. 418.

KANSAS.

TRUST COMPANIES.

Statutes of 1909.

(With Amendments to 1914.)

4118. Investment of Funds. Sec. 50.—Any life insurance company, or any trust or loan company heretofore or hereafter organized under any law of this state, may, by the direction and consent of two-thirds of the respective boards of directors, or finance committee, purchase or invest, by loan or otherwise, any of their funds in bonds, or notes and mortgages on unencumbered real estate worth fifty per cent more than the sum so loaned thereon, or in stocks or bonds of the United States or of this state, or any other state, or in bonds issued by any county, city, town, village or school district of this city, pursuant to any law of this state; and any such life insurance company may also invest its funds by loans to its policy-holders to an amount not exceeding the reserve held by such company upon each policy, to be secured by the promissory note of the policy-holder, and the assignment to the company of the policy upon which such loan is made, anything in the charter of any of such companies to the contrary notwithstanding.

Sec. 3590. 153. Not to Profit from Estate.—No profits shall be made by executors or administrators by the increase, nor shall they sustain any loss by the decrease or destruction, without their fault, of any part of the estate.

Loan to Firm of which Trustee is a Member.

When a trustee loans trust funds to a partnership of which he is a member, with the knowledge of the other partners, it becomes a partnership debt, and the beneficiary may follow the fund and recover. *Ellicott v. Barnes*, 31 Kansas 170; *Bush v. Bush & Co.*, 33 Kansas 556.

Trustee May Not Profit from the Estate.

The purchase of trust property by the trustee for his own benefit is generally held to be void, even if he paid a fair price. *Frazier v. Jeakins*, 64 Kansas 615.

Carrying on Business.

A trustee, expressly authorized to carry on the business of the testator for a time, may do so under the direction of the probate court, but in the absence of such authority he may not continue the business of the decedent. *Campbell v. Faxon*, 73 Kansas 675.

Guardian.

A guardian must lend the money of his ward, and section 3975, of the Statutes of 1909, requires him to obtain an order of court authorizing the investment.

KENTUCKY.

TRUST COMPANIES AND TRUSTEES.

Statutes of 1909.

(With Amendments to 1914.)

Sec. 2254. Funds and Capital. How to be Invested.—The capital stock of a trust company, and the funds in its possession, not held in a fiduciary capacity, may be invested in such manner as the directors deem prudent and safe; and the funds held in fiduciary capacity shall be invested under the order of court, or in such manner as may be provided by law for the investment of other trust funds; and the capital stock shall be primarily liable for the obligations of the corporation in its fiduciary capacity.

Sec. 4168. Investment of Funds by Fiduciary.—That it shall be lawful for persons or corporations holding funds in a fiduciary capacity for loan or investment, to invest the same in real estate, mortgage notes or bonds, or in such other interest-bearing or dividend-paying securities as are regarded by prudent business men as safe investments, and to make loans with such securities as collateral; but such funds shall not be invested in the bonds or securities of any railroad or other corporation, unless such railroad, or other corporation, has been in operation more than ten years, and, during that time, has not defaulted in the payment of principal or interest on its bonded debt, or be invested in the bonds of a county, district, town or city that, within ten years, has defaulted in the payment of the interest or principal of its bonded debt; and a fiduciary shall account for all interest or profit received.

Sec. 4169. Sale of Bonds and Securities. Purchaser Protected.—All persons or corporations holding stocks, bonds or other securities, in a fiduciary capacity for loan or invest-

ment, shall have power to sell and transfer the same whenever in the judgment of such fiduciary such sale will benefit the trust estate, and reinvest the proceeds as in Section 4168 of this chapter authorized; but no administrator or executor shall sell any dividend-paying stocks, bonds or other security which the decedent owned at his death, until so ordered by a court of general equity jurisdiction in the county where letters of administration was granted or the will recorded; and the court, or, in vacation, the judge thereof, may, upon the ex parte petition of said fiduciary, make said order whenever it is necessary to raise funds to pay the debts of the decedent, or when said court or judge may, in his discretion, deem necessary for the protection of the estate or the interest of the beneficiary. A purchaser in good faith for value from such fiduciary shall not be bound to look to the application of the proceeds of sale, nor shall a corporation in which stock held by a fiduciary is sold, as herein authorized, be liable for transferring such stock on its books upon the order of such fiduciary.

Sec. 4170. Sale or Investment to Accord with Instrument Creating.—The provisions of this chapter shall not be construed to permit a sale, investment or loan in conflict with the provision of the will, deed or other instrument creating the trust, or under which the funds or property may be held.

Note.—The statute was passed in 1890 and amended in 1892, and changed the previous law in Kentucky, by which investments were authorized only in bonds of the United States or the State of Kentucky, or some county or city of the Commonwealth, paying six per cent interest. By implication, it authorizes the loaning of money on or investment in bonds or securities of a railroad or other corporation where it has been in operation more than ten years and has not defaulted in the payment of the principal or interest, in that time, of its bonded debt, and impliedly authorizes investment in bonds of county, town or city which has not defaulted, in ten years, in the payment of principal or interest of its bonded debt. It also expressly authorizes investment in any interest-bearing or dividend-paying securities that are regarded at the time of the investment by prudent business men as safe investments. The word "securities" as used here apparently means stocks and bonds, the word "dividend" evidently referring to stocks.

Trustee May Not Obtain Personal Profit from the Estate.

One who occupies a fiduciary relation may not reap any personal gain from the estate. *Baker v. Lane*, 118 S. W. Rep. 963. A purchase with trust moneys made in the individual name of the trustee is voidable at the option of the beneficiary. *Prewitt v. Morgan's Heirs*, 119 S. W. Rep. 174.

Carrying on Business.

A trustee who carries on the business of the estate in his own name must account for interest on the cash funds employed. *Weir v. Weir*, 42 Ky. 645.

Must Distribute or Invest.

It is the duty of the trustee to make the fund as productive as prudence will permit. A trustee who permits the funds to lie idle beyond a reasonable time is chargeable with interest. *Blakey's Exr. v. Blakey*, 26 Ky. 674; *Jennings' Exr's. v. Davis*, 35 Ky. 127; *Karr's Admr. v. Karr*, 36 Ky. 3; *Clemens v. Caldwell*, 46 Ky. 171.

But interest is not chargeable when funds are placed in a bank pending contest of a will. *Taylor v. Minor*, 90 Ky. 544. Nor until after a proper demand for distribution has been made. *Hall v. Sims*, 25 Ky. 509.

Continuing Investments Made by Testator.

It seems that formerly a trustee was not permitted to continue investments made by the testator in Bank of Kentucky stock. *Smith v. Smith*, 30 Ky. 238. But even before the passage of the present statutes the rule seems to have been relaxed to such an extent that a trustee was permitted to continue investments in bank stock. The rule of prudence was thus liberally construed. *Fidelity Trust Co. v. Glover*, 90 Ky. 355.

May Not Mingle Trust Funds.

A trustee is personally liable if he mingles trust funds with his own, or if he invests on merely personal security. *Clay v. Clay*, 60 Ky. 548.

Bank Stock.

In order that a trustee may be justified in the investment of trust funds in bank stock, the corporation must have been in operation for more than ten years. Investment in such stock is permitted under the general words "or dividend-paying securities" in section 4168, only when these general words are limited by the words which follow. Consequently, the bank must have been in operation for more than ten years and must not have defaulted in payment of principal or interest. The limitations of the statute apply to all corporations,

the word "railroad" being used merely as an illustration. Before a trustee is permitted to invest in stock of a private business corporation, such corporation must have fulfilled all the requirements of the statute. *Robertson v. Robertson's Trustee*, 130 Ky. 293.

Real Estate in Another State.

The real estate mentioned in section 4168 is not limited to real estate located in Kentucky. *Ridley v. Dedman*, 134 Ky. 146. But the decision cannot be said to decide the question definitely, for the trust instrument provided for sale and reinvestment, and it was to the interest of the beneficiary to have the investment made in another state. Moreover, a court of chancery had ordered a sale for the purpose of giving the trustee an opportunity to buy a home in Alabama. Although the court said that there was no rule limiting the trustee to investments in real property in Kentucky, it would seem to be safer not to invest in property without the state unless so ordered by the court.

Guardians.

Sections 4168 and 4169 apply to guardians. Prior to the enactment of these sections extending the field of investments for trustees, guardians and trustees were limited to real estate and government securities. But when the trustee exercised good faith, the courts were liberal in their treatment, even going so far as to sanction investments in corporate stock or mere personal security. *Durrett's Guardian v. Commonwealth*, 90 Ky. 312.

Construction of Sections 4168 and 4169.

As to the construction of sections 4168 and 4169, of the Statutes, see: *Goff's Guardian v. Goff*, 123 Ky. 73; *Aydelott v. Breeding*, 111 Ky. 847; *Stone v. Clay*, 103 Ky. 314; *Bank v. Winn*, 110 Ky. 140; *Chappell v. Chappell*, 124 Ky. 691.

LOUISIANA.

TRUSTEES GENERALLY.

Civil Code of 1909.
(With Amendments to 1914.)

Sec. 1150.—All Executors, Administrators, Curators and Syndics shall deposit all moneys collected by them, as soon as the same shall come into their hands, in one of the chartered banks of this state or in one of their branches, allowing interest on deposits, if there be one in the parish. They shall keep a bank book in their official name, and shall on no account withdraw the deposits, or any part thereof until a tableau of distribution shall be homologated, or unless ordered by a competent court, and then only to pay such debts as may be ordered for payment. On failure to comply with the provision of this section, they shall be condemned jointly and severally with their securities to pay to the use of the estate twenty per cent interest per annum on the amount not deposited or withdrawn without authority, beside all special damage suffered, and shall be dismissed from the office.

TRUST COMPANIES.

Statutes of 1904.

Investments. Section 8 of Laws Relating to Savings, Safe Deposit and Trust Banks.—All funds held by said bank as agent or trustee, which as such they have power, authority or direction to invest, may, unless otherwise required by the principal or by the court, or by the person constituting such trust or agency, be invested by them in bonds of the United States, or of any of the states of the Union, or of any of the parishes, municipal corporations, or levee, or drainage, or road districts of the State of Louisiana, or of any of

the counties or municipal corporations of any of the states of the Union (provided that at the time of such investment such bonds shall be quoted at par or above in the markets where such bonds are usually sold, and the interest on said bonds shall have been regularly paid for at least two years prior to such investment) or in the stocks of incorporated railroads, canals or other quasi-public corporations (provided that such stocks shall, at the time of such investment, be quoted at par or above in the markets where such stocks are listed and usually sold, and have regularly paid a dividend of not less than four per cent per annum for at least five years prior to such investment) or in first mortgages on real estate (provided that no sum shall be lent on any mortgage for more than fifty per cent of the appraised value of the property, nor for a longer period than ten years). None of the funds or the property held by such a bank as agent or trustee shall be counted among the assets or liabilities of such bank in making the statements required by law to be published of the affairs of such bank.

GUARDIANS.

Revised Civil Code of 1909.

(With Amendments to 1914.)

Sec. 347.—The tutor shall be bound to invest in the name of the minor, the revenues which exceed the expenses of his ward, whenever they amount to five hundred dollars. In default thereof he shall be bound to pay on such excess the rate of interest allowed by law.

Sec. 348.—The investment of the funds of the minor must be made by public act and secured by mortgage, unless such investment be made in the bonds of the State of Louisiana or in bonds for the payment of which the faith of the State of Louisiana stands pledged, and this investment in bonds shall only be made under a decree of the court having jurisdiction over the tutorship, nor shall such investment be changed or the bonds alienated except by a decree of the same court.

In case of such investment in bonds, it shall be the duty of the tutor to furnish the Auditor of Public Accounts with a copy of the decree of the court authorizing such investment and to cause the bonds to be registered in the office of the Auditor. The Auditor shall write, in large and legible characters, on the face of the bonds, that they are the property of such minor or minors, mentioning his, her or their names; that they were purchased by virtue of a decree of the court aforesaid; and they are not transferable, unless by virtue of a decree of such court authorizing the same, and he shall sign the statement. Such bonds shall thereby lose their negotiable character, and no person obtaining possession thereof, other than the minor or minors to whom they belong, shall have any rights therein or thereto. The Auditor shall keep a distinct book wherein to register such bonds.

Speculation.

A trustee may not speculate with the funds of the estate. *Darse v. Leaumont*, 5 Robinson 287.

Must Not Invest in Individual Name.

A trustee may not purchase or take security for an investment in his individual name. *Lowe v. Armant*, 9 Robinson 236; *Hall v. Woods*, 4 La. Annual 85.

Deposit in Bank.

By an act in force since 1837, executors and administrators are required to deposit moneys belonging to the estate "in one of the chartered banks of this state, or in one of their branches, allowing interest on deposits, if there be one in the parish," under a penalty of twenty per cent per annum interest on the amount not so deposited, or withdrawn without order, and dismissal from office. But this statute does not require money received by executors to be deposited, unless there be a bank which, by its charter, pays interest on deposits. The object of the law is to render the funds productive. Due diligence will relieve the trustee from the penalty. *Succession of Peytavin*, 7 Robinson 477.

When trustees exercise reasonable care in selecting a solvent bank and depositing the funds, the protection of the law will be extended to them. *Cooper v. Pellerin*, 9 Robinson 450.

Duty to Invest.

The excess of revenues over the expenses of a minor are a part of the capital, and if the tutor fails to invest the excess over \$500,

as directed by law, he is chargeable with interest. *Glenn v. Elam*, 3 La. Annual 611; *Fuselier v. Babineau*, 14 La. Annual 764.

Persons holding money in a fiduciary capacity are not permitted to leave it with commission merchants merely because it is convenient and because they choose to deal with their own in that way. *Succession of Stone*, 31 La. Annual 311.

May Not Continue Business.

Although an executor may cultivate a crop to fruition, he may not, without authority, carry on a plantation and contract with reference thereto. *Florsheim Bros. v. Holt*, 32 La. Annual 133.

Investments Made on Credit.

Investments should be made out of surplus of a ward's estate. The heirs are not bound when investments are made on credit. This amounts to dangerous speculation. *Randlett v. Gordy*, 32 La. Annual 904.

Family Meeting and Advice of Court.

The old custom of a family meeting for consultation and advice to trustees is still retained in Louisiana. A tutor owes his wards in all cases the funds which he receives, together with legal interest, and he can shield himself from responsibility only by investing funds in their name, under a judgment of court rendered on the advice of a family meeting. *Monget v. Walker*, 4 La. Annual 214.

But a trustee is not compelled to consult the family meeting to invest. *Mather v. Knox*, 34 La. Annual 412.

MAINE.

TRUST COMPANIES.

Laws of 1907.

(With Amendments to 1914.)

Board of Investment. Section 12.—The board of directors or the executive board of such company shall constitute the board of investment of the company. Said directors or executive board shall keep in a separate book, specially provided for the purpose, a record of all loans and investments of every description made by said company, substantially in the order of time when such loans or investments are made, which shall show that such loans or investments have been made with the approval of the Investment Board of said company, and which shall indicate such particulars respecting such loans or investments as the Bank Examiner shall direct. This book shall be submitted to the directors and stockholders, and to the Bank Examiner whenever requested. Such loans or investments shall be classified in the book as the Bank Examiner shall direct.

Trust Funds. Section 14.—All the property or money held in trust by any such company shall constitute a special deposit, and the accounts thereof of said trust department shall be kept separate, and such funds and the investment or loans of them shall be specially appropriated to the security and payment of such deposits, and not be subject to any other liabilities of the company, and for the purpose of securing the observance of this proviso, such company shall have a trust department in which all business pertaining to such trust property shall be kept separate and distinct from its general business.

TRUSTEES GENERALLY.

Statutes of 1904.

(With Amendments to 1914.)

Sec. 9. Chapter 70.—Any judge of probate, having jurisdiction of the trust, and the Supreme Judicial Court in any county, on application of the trustee, or of any person interested in the trust estate, after notice of all interest, may authorize or require him to sell any real or personal estate held by him in trust, and to invest the proceeds thereof, with any other trust moneys in his hands, in real estate, or in any other manner most for the interest of all concerned therein; and may give such further directions as the case requires, for managing, investing and disposing of the trust fund, as will best effect the objects of the trust.

Guardians. Sec. 20.—A guardian may sell the property of the ward and invest the proceeds of such sale, or any other moneys in his hands, in real estate or in any other manner as ordered by the court.

Must Follow Provision of Trust Instrument.

In making investments the trustee must follow strictly the provision of the trust instrument and if the written consent of the *cestui que trust* is necessary, a failure to secure it renders the trustee liable. *Crocker v. Pierce*, 61 Me. 58.

When Trustee May Sell.

When a specific bequest of the income of certain stocks is needed, the trustee has no power to sell such stock, but in case the stock is likely to depreciate in value to the injury of the income, the court, under its power to determine the expediency of making changes of investments, may order the trustee to sell and reinvest. *Richardson v. Knight*, 69 Me. 285.

Power to Sell Does Not Give Power to Purchase on Credit.

A trustee who is given power to sell parts of the estate and invest the proceeds does not have power to purchase lands on credit. *Bowman v. Pinkham*, 71 Me. 295.

When Repairs May Be Considered an Investment.

A trust deed gave the trustees power "To keep and maintain the principal of said trust estates safely invested according to their

best judgment." The estate owned mortgages on mill property and it was necessary for the trustees to take the property in payment of the debt. It was not a good investment and the trustees made necessary repairs and sold the property. The court decided that when real estate is purchased as an investment, or however obtained, if the trustees decide to keep it as such, they may make such repairs as they deem necessary to put it in good condition at the expense of the capital. After that they must keep it in repairs at the expense of income. Repairs made at the expense of capital are to that extent an investment of the trust fund, and are therefore justifiable only when the realty itself is a proper investment for the fund. *Veazie v. For-saith*, 76 Me. 172.

Rate of Interest.

A trustee who had invested in United States bonds yielding less than three per cent was accused of an injudicious investment because some other more profitable investment should have been obtained. But investments carefully and judiciously made cannot be attacked because the yield is not high. *Emery v. Batchelder*, 78 Me. 233.

Measure of Trustee's Duty.

In measuring the duty of a trustee with the usual conduct of the man of average prudence in the case of his own estate, reference is to be had to the conduct of such a man in making permanent investments of his savings outside of ordinary business risks, rather than to his conduct in business chances. A mere business chance or prospect, however promising, is not a proper place for trust funds.

Second Mortgages.

Second mortgages are unsuitable, for they subject the estate to the possibility of raising funds to pay off the first mortgage. *Mattocks v. Moulton*, 84 Me. 545.

Stocks and Bonds.

Stocks and bonds of a new corporation, where the success of the business is not established, are not suitable for investments of trust funds. *Mattocks v. Moulton*, 84 Me. 545.

Personal Security.

Trustees may not invest funds upon mere personal security. *Mattocks v. Moulton*, 84 Me. 545.

Power to Sell.

The Maine courts have gone far in giving a trustee power to sell, and have indicated that the words "invest and manage" properly impart and imply a power of sale unless a contrary intention on the

part of the testator can be found in the will taken as a whole. *Robinson v. Robinson*, 105 Me. 63.

May Not Invest for Personal Benefit.

A trustee by investing trust funds in his own business, or for his own benefit or accommodation becomes an insurer of the fund and of its productiveness. It is only in making investments entirely outside of, and apart from, his own property or interest, that a trustee can have the approval of the court. *Bangor v. Beal*, 85 Me. 129.

MARYLAND.

Code of 1911.

(With Amendments to 1914.)

Sec. 167. The Orphans' Court, if they shall think such sale advantageous to the ward, may order any guardian to sell leasehold estates of his ward, and shall order the proceeds to be invested in bank stock or any other good security, in the name of the ward; and no sale, transfer or disposal of the said stock shall be made without the order of the court. The said court may also, if they shall think the same advantageous to the ward, order any guardian to lease any leasehold estates of the ward, for the whole or any part of the unexpired term, on such terms as may be deemed advantageous; provided, that such agreement for a lease shall not have any effect until reported to and approved by the court, and the rents arising on such lease shall be accounted for as other property or income of the ward.

Sec. 168. The Orphans' Court may order any money belonging to a ward to be invested in like manner and subject to the same restrictions as prescribed in the preceding section.

Sec. 172. Order of Orphans' Court.—They shall order the guardian who has received from any trustee of a court of equity any proceeds of real estate of his ward sold by such trustee, or the proceeds of the sale of leasehold estate of his ward, sold by order of the Orphans' Court, or moneys belonging to his ward, to invest the same in mortgages on unincumbered real estate, worth at least double the amount loaned, or such public stock, permanent funds, or other good securities to be selected by said guardian, as will yield the highest rate of interest that can reasonably be had, or they may when it is clearly for the benefit of the ward, order the same to be in-

vested in land; and the investment selected shall be reported to the Court for its approval before becoming permanent, and the increase or surplus income of such investment, after what may be necessary for the maintenance and education of the ward, shall be invested in like manner under the direction and approval of the Court, and no part of the principal shall be applied to the maintenance and education of the ward without the order and consent of the Orphans' Court first had and obtained.

Sec. 173. Must Invest in Name of Ward.—All moneys invested under the preceding section shall be invested in the name of the ward, and shall be transferable only under the order of the Orphans' Court; and all transfers without such order shall be void; and whenever the Orphans' Court shall in its discretion authorize a guardian to invest or mortgage the proceeds of the sale of real estate belonging to his ward and sold by a trustee in equity, the affidavit of consideration to such mortgage shall be made by the guardian of such ward.

Sec. 242. Administrators and Guardians.—The Orphans' Court may, in their discretion, and whenever it shall seem proper to them, either *ex-officio*, or upon application, order any administrator to whom they may have granted administration, or any guardian whom they may have appointed, or whose bond they may have approved, to bring into Court, or place in bank, or invest in bank or other incorporated stock, or any other good security, any money or funds received by such administrator or guardian; and the Court shall direct the manner and form in which such money or funds shall be placed in bank or invested, and the same shall at all times be subject to the order and control of the Court; and if the administrator or guardian shall not, within a reasonable time to be fixed by the Court, comply with the order, his administration or guardianship may be revoked.

Rule Adopted by the Courts of Baltimore.

The rule in Maryland is that any investment by a trustee must be approved by the court having jurisdiction of the trust. For the purpose of facilitating the work of trustees

the courts of Baltimore have adopted rules governing investments, and if the trustee invests in the manner prescribed by the court, the investment will be approved. The courts of Baltimore have thus provided rules which in many other states have been made statutory. Because of the importance of these rules, and because they are undoubtedly a guide for trustees in the whole state, they are stated in full. In addition to the rules and the specific securities mentioned, the court also prepares a list of securities which comply with the rules and this list is revised each year.

Sec. 1. Investments of Trust Funds, unless it is otherwise provided in the instrument creating the trust, or except under extraordinary conditions set forth fully to the court, will be sanctioned by the Circuit Court of Baltimore City and the Circuit Court Number Two of Baltimore City only when made in the securities mentioned in the Third Section of this Rule.

Sec. 2. The list of authorized securities mentioned in the foregoing, and set out in the succeeding section shall be annually revised by the Supreme Bench, and a Committee of Judges shall be appointed for that purpose at the general term held at the close of the September Term of the Common Law Courts, which Committee shall have power to appoint for its assistants such expert advisers as it may find expedient and practicable.

The application to place upon the list of authorized investments any investment which does not fully meet the requirements set forth in this Rule will not be considered at any other time save at the time of the annual revision of the list, except under special circumstances, and with suitable provision for procuring impartial expert testimony at the expense of the party making such application.

Sec. 3. The following investments for Trust Funds will ordinarily be sanctioned by the said Courts upon petition, and subject to the limitations in this section, hereinafter set forth, until the further order of court, made in pursuance of the preceding section.

(A) United States Bonds.—All Bonds for which the faith

of the United States is pledged to provide for the payment of the interest and principal.

(B) State and Territory Bonds.—All authorized Bonds of any State or Territory of the United States and of the District of Columbia.

(C) County Bonds.—(1) All duly authorized Bonds of any County in this State.

(2) All duly authorized Bonds of any County of any other State of the United States having a population of not less than 40,000 persons, according to the last Federal Census,

Provided such County has not defaulted in the payment of any part of the principal and interest of any of its indebtedness within ten years prior to the making of the investment;

Provided also, that the net indebtedness of the said County does not exceed five per cent. of the last preceding valuation of property for taxation;

Provided also, that there is no obstacle by Constitutional or Legislative limitation, or otherwise, to the enforcement of the payment of the principal and interest of said Bonds by usual legal process.

(D) City, Town and Other Municipal Bonds.—(1) Any duly authorized Bond issued by any municipality within the State of Maryland.

(2) Any duly authorized Bond of any City in any other State of the United States of 25,000 or more inhabitants, according to the last Federal Census,

Provided (in either case) that such bond is a direct obligation upon said Municipality or City, and that there is no obstacle by Constitutional or Legislative limitation, or otherwise, to the enforcement of the payment of the principal and interest of the said bonds by usual legal process.

Special Assessment Bonds and Improvement Bonds which are not direct and primary obligations of the City issuing the same are not allowed.

Provided also (in either case) that such Municipality or City has not defaulted upon any of its funded obligations for the next preceding ten years.

Provided also, that the net indebtedness of such Municipality within the State of Maryland, if of less than 25,000 inhabitants, according to the last Federal Census, does not exceed five per centum of its last preceding valuation of property for taxes; and that the net indebtedness of any such Municipality or City situate in Maryland or elsewhere of more than 25,000 inhabitants, and less than 100,000 inhabitants, together with the indebtedness of any District, or other Municipal corporation, or subdivision, except a County which is wholly or in part within the limits of said City, does not exceed seven per cent. of such valuation; and that the net indebtedness of any such Municipality or City situate in Maryland or elsewhere, if of more than 100,000 inhabitants, according to the last Federal Census, together with the indebtedness of any District, or other Municipal corporation, or subdivision, except a county which is wholly or in part included within the limits of said City, does not exceed ten per centum of such valuation. Such net debt of any City or Municipality is to be determined by deducting from the gross debt the amount of its water debt and negotiable securities in its Sinking Funds, which are available for the payment of its Bonds.

(E) Railroad Bonds.—(1) The mortgage bonds of any railroad corporation incorporated under the laws of the United States, or any of them, which either actually owns not less than 500 miles of standard gauge railroad, exclusive of sidings, in the United States, or the gross earnings of which in each year during the five years preceding the date of any such investment from the operation of said corporation, including the gross earnings of all lines leased and operated, or controlled and operated by it, shall not have been less than Ten Millions of Dollars.

Provided, that at no time within five years next preceding the date of any such investment shall such railroad corporation have failed regularly and punctually to pay the matured principal and interest of all its mortgage and other fixed interest indebtedness, and in addition thereto regularly and punctually to have paid in cash out of income in dividends to its stockholders during each of said five years an

amount at least equal to four per cent. on all its outstanding capital stock; and further

Provided, that all bonds authorized for investment by this clause shall be secured by a mortgage which is, at the time of making said investment, or was at the date of the execution of said mortgage, (1) a first mortgage upon not less than seventy-five per cent. of the railway actually owned by the company issuing said bonds, exclusive of sidings at the date of said mortgage, or (2) a general or consolidated mortgage issued to retire all prior lien mortgage debts of said company outstanding at the time of said investment, and covering at least seventy-five per cent. of the railway owned by said company at the date of said mortgage; but no one of the bonds so secured shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds, which, together with all outstanding prior debts of said company, after deducting therefrom, in case of a refunding mortgage, the bonds reserved under the provisions of said mortgage to retire prior debts at maturity, shall exceed three times the outstanding capital stock of said company at the time of making said investment; and no mortgage is to be regarded as a Refunding Mortgage under the provisions of this rule unless the bonds which it secures mature at a later date than any bond which it is given to refund, nor unless it covers a mileage at least twenty-five per cent. greater than is covered by any one of the prior mortgages so to be refunded.

(2) Any Underlying Bonds to secure the retirement of which Refunding Bonds have been authorized under a mortgage fully complying with the provisions of the First Subsection hereof.

(3) Any "Underlying" First Mortgage Bonds covering the whole of any railroad which has been consolidated with and made part of the main line of another railroad actually owning and operating not less than Five Hundred miles of standard gauge railroad, provided said last mentioned railroad has issued and outstanding mortgage bonds, covering its whole trackage, including the road so consolidated with,

to such an amount that, dividing its whole mortgage indebtedness by the whole number of miles of road, the quotient will be at least double the amount per mile of said First Mortgage Bonds which remain as an underlying lien prior to the mortgage bonds so issued on the consolidated road,

Provided neither of said railroads has failed to pay either the interest or principal of any of its mortgage or fixed interest indebtedness for ten years next preceding such investment.

(4) The following Steam Railroad securities specifically named:

Alabama Central R. R. Co. First Mortgage 6% Bonds, due 1918.

Alabama Midland Rwy. Co. First Mortgage 6% Gold Bonds, due Nov. 1, 1928. (Reduced to 5%.)

Atchison, Topeka & Santa Fe Rwy. Co. Gen'l Mortgage 4% Gold Bonds, due Oct. 1, 1995.

Atlantic Coast Line Railroad Company First Consolidated Mortgage 4% Gold Bonds, due July 1, 1952; and all securities underlying said mortgage.

Atlantic Coast Line R. R. Co. of South Carolina, General First Mortgage 4% Bonds, due July 1, 1948.

Baltimore & Ohio R. R. Co. 4½% Equipment Trust Certificates, due annually from April 1st, 1914, to April 1st, 1923.

Baltimore & Ohio R. R. Co., Prior Lien, 3½% Gold Bonds, due July 1, 1925.

Baltimore & Ohio R. R. Co., 1st Mortgage 4% Gold Bonds, due July 1, 1948.

Baltimore & Ohio R. R. Co., 1st Mortgage Southwestern Division 3½% Gold Bonds, due July 1, 1925.

Baltimore & Ohio R. R. Co.—Pittsburgh, Lake Erie and West Virginia System, Refunding Mortgage 4% Gold Bonds, due Nov. 1, 1941; and all securities underlying this mortgage.

Baltimore, Catonsville & Elliott's Mills Passenger R. R. Co. 1st Mortgage 5% Bonds, due July 1, 1916.

Baltimore, Sparrows Point & Chesapeake R. R. First Mortgage 4½% Bonds.

Baltimore Traction Co. 1st Mortgage 5% Bonds, due Nov.

1, 1929, and North Baltimore Division 5% Gold Bonds, due June 1, 1942.

Brunswick & Western R. R. Co. 1st Mortgage 4% Bonds, due Jan. 1, 1938.

Burlington, Cedar Rapids and Northern Rwy. Co. Consolidated 1st Mortgage 5% Gold Bonds, due April 1, 1934.

Carolina Central Railroad First Consolidated Mortgage 4% Gold Bonds, due Jan. 1, 1949.

Central Pacific Railway First Refunding Mortgage 4% Gold Bonds, due Aug. 1, 1949.

Central Railroad of New Jersey General Mortgage 5% Gold Bonds, due July 1, 1987.

Central Railway Company Cons. 1st Mortgage 5% Gold Bonds, due May 1, 1932.

Chesapeake & Ohio Rwy. Co.—Richmond & Alleghany Div.—1st Cons. Mortgage 4% Gold Bonds, due Jan. 1, 1989.

Chicago & Alton R. R. Refunding Mortgage 3% Bonds, due Oct. 1, 1949.

Chicago, Burlington & Quincy R. R. Co. General Mortgage 4% Bonds, due 1958.

Chicago & Northwestern R. R. Co. General Mortgage 3½% Bonds, due 1987.

Cleveland, Loraine & Wheeling Rwy. Co. Consolidated Mortgage 5% Bonds, due Oct. 1, 1933; Refunding Mortgage 4½% Bonds, due Jan. 1, 1930; General Mortgage 5% Bonds, due June 1, 1936.

Cleveland Terminal & Valley R. R. Co. First Mortgage 4% Bonds, due Nov. 1, 1995.

Colorado & Southern Rwy. 1st Mortgage 4% Gold Bonds, due Feb. 1, 1929.

Columbia & Greenville R. R. Co. First Mortgage 6% Bonds, due Jan. 1, 1916.

Durham & Northern Railroad First Mortgage 6% Bonds, due Nov. 1, 1928.

East Tennessee, Virginia & Georgia Rwy. Co. Consolidated Mortgage 5% Gold Bonds, due Nov. 1, 1956, and First Consolidated Mortgage 5% Gold Bonds, due July 1, 1930.

Florida Central & Peninsular Railroad First Mortgage 5% Gold Bonds, due July 1, 1918.

Florida Central & Peninsular Railroad First Mortgage Extension and Land Grant 5% Gold Bonds, due Jan. 1, 1930.

Florida Central & Peninsular Railroad First Consolidated Mortgage 5% Gold Bonds, due Jan. 1, 1943.

Georgia, Carolina & Northern Railroad First Mortgage 5% Gold Bonds, due July 1, 1929.

Georgia and Alabama Rwy. Co. Consolidated Mortgage 5% Bonds, due Oct. 1, 1945.

Georgia, Southern and Florida Rwy. Co. First Mortgage 5% Gold Bonds, due July 1, 1945.

Hocking Valley Rwy. First Consolidated Mortgage 4½% Gold Bonds, due July 1, 1999.

Huntington & Big Sandy R. R. Co. First Mortgage 6% Gold Bonds, due July 1, 1922.

Kansas City, Fort Scott & Memphis R. R. Co. Consolidated Mortgage 6% Bonds, due May 1, 1928.

Kentucky Central Rwy. Co. First Mortgage 4% Gold Bonds, due July 1, 1987.

Knoxville & Ohio R. R. Co. First Mortgage 6% Bonds, due 1925.

Lake Erie and Western R. R. Co. First Mortgage 5% Bonds, due Jan. 1, 1937.

Lake Roland Elevated Rwy. Co. First Consolidated Mortgage 5% Gold Bonds, due Sept. 1, 1942.

Lehigh Valley R. R. Co. General Consolidated Mortgage 4% and 4½% Bonds, due 2003.

Lehigh Valley of N. Y. First Mortgage Gold Guaranteed 4½% Bonds, due July 1, 1940.

Louisville & Nashville R. R. Co. Atl. Knoxville & Cin. Div. 4% Bonds, due 1955.

Louisville & Nashville R. R. Co. Unified 50-year 4% Gold Bonds, due July 1, 1940.

Missouri, Kansas and Texas Rwy. Co. First Mortgage 4% Bonds, due June 1, 1990.

Minneapolis, St. Paul and Sault Ste. Marie First Consolidated Mortgage 4% Bonds, due July 1, 1938.

Monongahela River R. R. Co. First Mortgage 5% Gold Bonds, due Feb. 1, 1919.

Nashville, Chattanooga and St. Louis Rwy. First Consolidated Mortgage 5% Gold Bonds, due April 1, 1928.

New York, Chicago and St. Louis R. R. First Mortgage 4% Gold Bonds, due Oct. 1, 1937.

New York, Ontario and Western Rwy. Refunding Mortgage 4% Gold Bonds, due June 1, 1992.

North Eastern R. R. Co. Consolidated Mortgage 6% Bonds, due Jan. 1, 1933.

Northern Central Rwy. Co. All issues secured by mortgage.

Northern California Rwy. First Mortgage 5% Bonds, due June 1, 1929.

Northern Pacific Rwy. Co. Prior Lien 4% Gold Bonds, due Jan. 1, 1997.

Northern Railway First Mortgage 5% Gold Bonds, due Oct. 1, 1938.

Norfolk and Carolina R. R. First Mortgage 5% Gold Bonds, due April 1, 1939.

Norfolk and Carolina R. R. Second Mortgage 5% Gold Bonds, due Jan. 1, 1946.

Norfolk and Western Rwy. Co. First Consolidated Mortgage 4% Gold Bonds, due Oct. 1, 1996; and securities underlying the same.

Ohio & Little Kanawha R. R. Co. First Mortgage 5% Bonds, due March 1, 1950.

Ohio River R. R. Co. First Mortgage 5% Bonds, due June 1, 1936, and General Mortgage 5% Bonds, due April 1, 1937.

Oregon Short Line Ry. First Mortgage 6% Bonds, due Feb. 1, 1922.

Oregon R. R. and Navigation Co. Consolidated Mortgage 4% Gold Bonds, due June 1, 1946.

Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Consolidated Mortgage 4½% Bonds, due Oct. 1, 1940; 4½% Bonds, due April 1, 1942; 4½% Bonds, due Nov. 1, 1942; 4% Bonds due Nov. 1, 1945; 3½% Bonds, due Aug. 1, 1949; 4% Bonds, due Dec. 1, 1953; 4% Bonds, due Nov. 1, 1957.

Pittsburgh, Cleveland & Toledo R. R. Co. First Mortgage 6% Bonds, due Oct. 1, 1922.

Pittsburgh, New Castle & Lake Erie R. R. Co. First Mortgage 4% Bonds, due July 1, 1917.

Pennsylvania R. R. Co. All mortgage bonds of lines directly operated by it, when the bonds are guaranteed by it.

Raleigh & Augusta Air Line Railroad First Mortgage 6% Bonds, due Jan. 1, 1926.

Raleigh & Gaston Railroad First Mortgage 5% Gold Bonds, due Jan. 1, 1947.

Ravenswood, Spencer & Glenville Rwy. Co. First Mortgage 6% Bonds, due August 1, 1920.

Reading Co. and the Philadelphia & Reading Coal and Iron Co. General Mortgage 4% Gold Bonds, due Jan. 1, 1997.

Richmond & Danville R. R. Co. Consolidated Mortgage 6% Gold Bonds, due Jan. 1, 1915.

Richmond & Danville R. R. Co. Debenture Mortgage 5% Bonds, due 1927.

Richmond & Petersburg R. R. Co. Consolidated Mortgage 6% and 7% Bonds, due May 1, 1915.

Richmond, Fredericksburg & Potomac R. R. Co. Consolidated Mortgage 4½% Gold Bonds, due April 1, 1940.

Richmond—Washington Co. 4% Guaranteed Coll. Trust Gold Bonds, due June 1, 1943.

St. Louis, Iron Mountain & Southern Rwy. Co. General Consolidated Mortgage 5% Bonds, due April 1, 1931.

St. Paul, Minneapolis & Manitoba Rwy. Co. Consolidated Mortgage 6% Gold Bonds, due July 1, 1933.

Savannah, Florida & Western Rwy. Co. First Mortgage 6% Gold Bonds, due April 1, 1934.

Seaboard and Roanoke R. R. Co. First Mortgage 5% Bonds, due July 1, 1926.

Silver Springs, Ocala & Gulf R. R. Co. First Mortgage 6% (reduced to 4%) Gold Bonds, due July 1, 1918.

South Bound R. R. Co. First Mortgage 5% Bonds, due April 1, 1941.

Southern Pacific R. R. Co. First Refunding Mortgage 4%

Gold Bonds, due Jan. 1, 1955, and First Consolidated Mortgage 5% Bonds, due Nov. 1, 1937.

Southern Pacific Branch Rwy. Co. First Mortgage 6% Bonds, due April 1, 1937.

Southern Rwy. Co. First Consolidated Mortgage 5% Bonds, due 1994, and "East Tennessee" Reorganization 5% Gold Bonds, due Sept. 1, 1938.

Texas and Pacific Rwy. Co. First Mortgage 5% Bonds, due June 1, 2000.

Toledo, St. Louis and Western R. R. Co. Prior Lien 3½% Gold Bonds, due July 1, 1925.

Union Pacific R. R. Co. First Refunding Mortgage 4% Bonds, due 2008, and First Mortgage Railroad & Land Grant 4% Gold Bonds, due July 1, 1947.

Vandalia R. R. Co. Consolidated Mortgage 4% Bonds, Series A, due Feb. 1, 1955, and Series B, due Nov. 1, 1957.

Virginia Midland Rwy. Co. Serial Mortgage 6% Bonds, Series C, due March 1, 1916. Serial Mortgage 5% Bonds, Series D, due 1921, Series E, due March 1, 1926, Series F, due 1931, and General Mortgage Bonds, due 1936.

Washington Terminal Co. First Mortgage 4% and 3½% Gold Bonds, due Feb. 1, 1945.

Washington, Ohio & Western R. R. Co. First Mortgage 4% Bonds, due 1924.

West Shore R. R. Co. Guaranteed First Mortgage 4% Bonds, due Jan. 1, 2361.

West Virginia & Pittsburgh R. R. Co. First Mortgage 4% Bonds, due April 1, 1990.

Wilmington & New Bern R. R. Co. First Mortgage 4% Gold Bonds, due August 1, 1947.

Wilmington & Weldon R. R. Co. General First Mortgage 5% Gold Bonds, due July 1, 1935.

(F) Equipment Bonds.—Any "Equipment Bonds" which are the direct obligation of any railroad company actually operating its own road, in its own name, any of whose mortgage bonds are authorized under Section E, sub-sections 1 or 2 of this Rule, or any Equipment Bonds secured by equipment leased to any railroad company actually operating its own

road, in its own name, any of whose mortgage bonds are good under Section E, sub-sections 1 or 2 of this Rule;

Provided, such bonds are issued against new rolling stock which shall actually cost said railroad company at least ten per cent. more than the amount of said equipment bonds, and of which issue of equipment bonds the deed of trust securing the same provides that at least one-tenth shall be called in and paid each year subsequent to the date of said bonds.

(G) Street Railway Bonds.—(1) The following street railway securities specifically named:

United Railways & Electric Company of Baltimore First Consolidated Mortgage 4% Bonds, due March 1, 1949, and underlying bonds of this corporation.

Atlanta Consolidated Street Railway Company of Atlanta, Ga., First Consolidated Mortgage 5% Gold Bonds, due Jan. 1, 1939.

Boston & Northern Street Railway Company First Refunding Mortgage 4% Gold Bonds, due July 1, 1954.

Chicago City Railway Company First Mortgage 5% Gold Bonds, due Feb. 1, 1927.

Chicago Railways Company First Mortgage 5% Gold Bonds, due Feb. 1, 1927.

City & Suburban Rwy. Co. of Baltimore First Mortgage 5% Gold Bonds, due June 1, 1922.

Georgia Railway & Electric Company First Consolidated Mortgage 5% Gold Bonds, due Jan. 1, 1932.

Lindell Railway Company First Mortgage Extended 4½% Bonds, due Aug. 1, 1921.

Manhattan Rwy. Co. Consolidated Mortgage 4% Bonds, due April 1, 1990.

Milwaukee Electric Railway & Light Company Refunding and Extension Mortgage 4½% Gold Bonds, due Jan. 1, 1931.

Milwaukee Electric Railway & Light Company Consolidated Mortgage 5% Gold Bonds, due Feb. 1, 1926.

Minneapolis Street Railway Company and St. Paul City Railway Company Consolidated Mortgage 5% Bonds, due Oct. 1, 1928.

Minneapolis Street Railway Company First Consolidated Mortgage 5% Bonds, due Jan. 15, 1919.

Portland Railway Company First and Refunding Mortgage 5% Gold Bonds, due Nov. 1, 1930.

St. Paul City Railway Company Cable Consolidated Mortgage 5% Gold Bonds, due Jan. 15, 1937.

Seattle Electric Company First Mortgage 5% Gold Bonds, due Feb. 1, 1930.

Third Avenue Railroad of New York First Mortgage 5% Bonds, due 1937, and First and Refunding Mortgage 4% Bonds, due 1960.

Wilmington City (Delaware) Railway Co. 5% Bonds, due September 1, 1951.

(2) The Bonds of Street Railroad corporations located wholly or in part in cities of the United States having a population of not less than 50,000, according to the last Federal Census, which have a franchise to run their cars over such streets and roads as may be in use by them at the date of the mortgage perpetually or for a period of time ending at least fifteen years after the date of the maturity of said bonds.

Provided, that the mortgage bond indebtedness of any such Street Railway does not exceed the amount of the Capital Stock of the corporation, and that such corporation has earned and paid regularly in cash out of income dividends of not less than 4 per cent. per annum on all of its Capital Stock for five years next preceeding such investment, and provided also that any first mortgage bond, covering the whole of any street railway, which has been consolidated with and whose track has been made a part of the main line of another street railway, whose bonds would be good under the previous provisions of this section, shall be deemed also to be authorized hereunder.

(H) Gas and Miscellaneous Securities.—Consolidated Gas Co. of Baltimore First Mortgage 5% Bonds, due 1939.

Consolidated Gas Co. of Baltimore City General Mortgage 4½% Bonds, due April 1, 1954.

Milwaukee Gas Light Co. First Mortgage 4% Gold Bonds, due 1927.

(I) Mortgage on Real Estate and Ground Rents.—(1) First Mortgage on real estate in Maryland to the extent of sixty per cent. of the value thereof if dwelling house, store, or office property and productive; fifty per cent. of its actual value if farm property and improved, or thirty per cent. of its actual value if unproductive, or manufacturing property.

(2) Ground Rents on unincumbered real estate situate in Maryland where the amount of the rent capitalized at 6% is not over 50% of the value of the property from which they issue.

The valuation must be certified (under oath) by at least two persons familiar with the value of said property, and the title must either be certified by a member of the Baltimore City Bar of at least five years practice or must be guaranteed by a reputable title insurance company.

General Provisions.

No Trustee can sell bonds held by him individually to himself as Trustee.

Unless by special order of Court upon petition plainly setting forth the fact, not more than 20% of any estate shall be invested in any one security.

Should any fixed interest obligation of any corporation, the mortgage bonds of which are authorized as Trust Investments upon this Rule, be defaulted upon, all bonds of such corporation or underlying issues upon its property shall be stricken from the list, and so remain until and unless such bonds shall be reinstated by special order.

Trustee May Not Obtain Personal Benefit.

A trustee may not obtain any personal interest in the trust estate or purchase at a sale thereof either directly or indirectly. *Ricketts v. Montgomery*, 15 Md. 46; *Cumberland Coal Co. v. Sherman*, 20 Md. 117; *North Baltimore Bld'g Assn. v. Caldwell*, 25 Md. 420; *Pairo v. Vickery*, 37 Md. 467.

Good Faith the Controlling Factor.

The Maryland courts have not followed the English rule. In fact, the courts of Maryland have been in the habit of promulgating their own rules regarding investments by trustees and these rules have been

liberal. Discretion and good faith on the part of the trustee are the important requirements.

Bank Stock.

In *Gray v. Lyneh*, 8 Gill 319, trustees who had invested in stock of the United States Bank were not held for the loss, but the trust instrument gave the trustees power to invest in "Some safe and profitable stock." By section 237, Article 37, of the Code, administrators and guardians under order of the Orphans' Court are authorized to invest in "bank stock or any other good security."

Gas Company Stock.

The rule of discretion has been construed broadly in *McCoy v. Horwitz*, 62 Md. 183. A widow was given wide discretion as executor, but the will provided that security valued at \$4,000 should be set aside, and the income applied to the support of grandsons until they became of age. The widow did not set aside the security, but invested in gas company stock which depreciated in value. Refusing to follow the English law and the general rule in America, the court did not compel the trustee to make good the loss for such an investment.

Changing Investment.

The early Maryland cases restrict the trustee as to his right to change investments. In *Murray v. Feinour*, 2 Md. Ch. 419, a testator bequeathed stock to a trustee for the benefit of certain children. The court decided that in the absence of specific power in the will or authorization by the proper court, the trustee had no power to change the investment.

Order of Court.

The Maryland courts have been strict in compelling trustees to invest trust funds under their supervision. A trustee who makes an investment without the sanction of the courts is liable for loss. At least this was the early rule. *Wayman v. Jones*, 4 Md. Ch. 501.

Although a trustee may act with the best intentions and the utmost good faith, and his not seeking the aid and instruction of the court may be no evidence to the contrary, if he wishes to avoid responsibility for losses by reason of investments which may prove to be unprofitable or worthless, he should first obtain authority from the court having jurisdiction over him, unless his discretion and powers are undoubted. *Lowe v. Convention*, etc., 83 Md. 409.

Personal Security.

A trustee has no right to invest trust funds in personal securities, and if he does so he makes the investment at his peril. Even where the investment is left to his discretion, it is not a sound discretion to invest in such securities. *Hunt v. Gontrum*, 80 Md. 64.

Beneficiaries May Consent.

A trustee may invest in any security provided he receives the consent of the beneficiaries and the beneficiaries are of age and are fully informed. *Hunt v. Gontrum*, 80 Md. 64.

Discretion Where Testator Names Trustee.

Where there are no instructions imposed by the testator, a trustee named by him is vested with a discretion which a conventional trustee does not ordinarily possess. A conventional trustee has limited discretion and if loss is due to an act by him not permitted by the instrument and not sanctioned by the court, he is liable. But when the testator has selected a particular person as trustee, and has clothed him with a discretion in making investments, and such trustee, in good faith and with diligence, makes an investment of trust funds strictly in accordance with the power conferred upon him, or in any way that a court of equity would have sanctioned at the time, if advised of the circumstances, he will be exonerated should a loss ensue, though he failed to invoke the guidance of the court, or to procure its subsequent ratification. *Gilbert v. Kolb*, 85 Md. 627.

Value.

The criterion by which the value is to be ascertained is the estimate of men of ordinary prudence who would deem it safe to make a loan of the same amount of their own money on the same property. *Gilbert v. Kolb*, 85 Md. 627.

Second Mortgages.

A trustee sold property belonging to the estate and took back a purchase money mortgage for the full price and a second mortgage on another small farm. The transaction resulted in a loss to the estate. This was not such an investment as a court would approve; consequently the trustee was liable for the loss. *Gilbert v. Kolb*, 85 Md. 627.

Guardian.

The statutes provide that an administrator or guardian may apply to the Orphans' Court for an order directing the manner and form of investment. Annotated Code, Vol. 2, Sec. 620.

It is the duty of the guardian to apply to the court, although it seems that he may receive the sanction of the investment after it has been made. *Oesterla v. Gaither*, 90 Md. 44; *O'Hara v. Shepherd*, 3 Md. Ch. 306.

But the court has no authority to authorize an investment to be made to the guardian himself. *Fidelity Co. v. Freud*, 115 Md. 29.

Corporate Stock.

The Orphans' Court may order an investment in corporate stock. *Ex Parte Stone*, 2 Md. 294.

MASSACHUSETTS.*

TRUST COMPANIES.

Laws of 1911.

(With Amendments to 1914.)

May Invest in Same Way as an Individual.—Every trust company is hereby authorized to invest the funds or estates which it may receive and hold as executor, administrator, administrator with the will annexed, receiver, assignee, guardian, trustee or conservator, in the same way, to the same extent, and under the same restrictions as an individual holding a similar position may invest such funds or estates.

Laws of 1910, Ch. 411.

Loans Outside of State.—No trust company shall advance money or credits upon notes secured by deed of trust or by mortgage upon farms or agricultural or unimproved land outside of this commonwealth, except upon land situated in the New England States or the State of New York, nor invest in, nor make loans upon the bonds or other securities of a company negotiating or dealing in such notes so secured or in such mortgages.

Continuing Business of Deceased.—The probate court may, upon such notice as it considers reasonable, authorize an administrator or executor to continue the business of the deceased, for the benefit of his estate, for a period stated in the decree. Such period shall not extend more than one year beyond the final appointment and qualification of the administrator or executor.

Investments, Sec. 16.—This section provides that trust companies may receive money as court depositaries and may also hold money or property in trust, or on deposit from executors, administrators, assignees, guardians and trustees.

* For list of legal investments in Massachusetts see Part III.

Sec. 17. Money or property received under the provisions of the preceding section shall be loaned on or invested only in the authorized loans of the United States, or any of the New England States, the counties, cities or towns thereof, or of the states of Illinois, Iowa, Michigan, Minnesota, Wisconsin, or the counties or cities thereof, or stocks of state or national banks organized within this commonwealth, or in the first mortgage bonds of a railroad corporation incorporated in any of the New England states and whose road is located wholly or in part in the same and which has earned and paid regular dividends on all its issues of capital stock for two years last preceding such loan or investment, or in the bonds of any such railroad company unencumbered by mortgage, or in first mortgages on real estate in this commonwealth, or in any securities in which savings banks may invest, or upon notes with two sureties of domestic manufacturing corporations or of individuals with a sufficient pledge as collateral of any of the aforesaid securities; but all real estate acquired by foreclosure of mortgage or by levy of execution shall be sold at public auction within two years after such foreclosure or levy.

Sec. 23. Creator of Trust May Authorize Investments in General Trust Fund.—A person creating a trust may direct whether money or property deposited under it shall be held and invested separately or invested in the general trust fund of the corporation; and such corporation acting as trustee shall be governed by directions contained in a will or instrument under which it may act.

Sec. 24. Money or Property Received in Trust Must Be Kept Separate.—Money, property or securities received, invested or loaned under the provisions of Sections 16 to 18 (where company acts as trustee), inclusive, shall be a special deposit in such corporation, and the accounts thereof shall be kept separate. Such funds and the investment or loans thereof shall be specially appropriated to the security and payment of such deposits, shall not be mingled with the investments of the capital stock or other money or property belonging to such corporation, or be liable for the debts or obligations

thereof. For the purpose of this section, such corporation shall have a trust department in which all business authorized by said Sections 16 to 18, inclusive, shall be kept separate and distinct from its general business.

Sec. 25. Trust Guaranty Fund.—The directors may from time to time set apart as a trust guaranty fund such portion of the profits as they may consider expedient. Such fund shall be invested in such securities only as the trust deposits may be invested in. The accounts of its investment and management, and the securities in which it is invested, shall be kept in the trust department.

Savings Banks.—Since Section 17 provides that money received by a trust company as a court depository or on deposit from executors, administrators, assignees, guardians and trustees, may be invested in any securities in which savings banks may invest, and since trustees who select such securities in good faith would undoubtedly be protected by the courts, it is advisable to include Section 68 of the Savings Bank Law, as amended to date.

SAVINGS BANK LAW.

Sec. 68. Deposits and the income derived therefrom shall be invested only as follows:

FIRST MORTGAGES OF REAL ESTATE.

First. In first mortgages of real estate located in this commonwealth not to exceed sixty per cent of the value of such real estate; but not more than seventy per cent of the whole amount of deposits shall be so invested. If a loan is made on unimproved and unproductive real estate, the amount loaned thereon shall not exceed forty per cent of the value of such real estate. No loan on mortgage shall be made except upon written application showing the date, name of applicant, amount asked for and security offered, nor except upon the report of not less than two members of the board of investment who shall certify on said application, according to their best judgment, the value of the premises to be mort-

gaged; and such application shall be filed and preserved with the records of the corporation.

At the expiration of every such loan made for a period of five or more years not less than two members of the board of investment shall certify in writing, according to their best judgment, the value of the premises mortgaged; and the premises shall be revalued in the same manner at intervals of not more than five years so long as they are mortgaged to such corporation. Such report shall be filed and preserved with the records of the corporation. If such loan is made on demand or for a shorter period than five years, a revaluation in the manner above prescribed shall be made of the premises mortgaged not later than five years after the date of such loan and at least every fifth year thereafter. If at the time a revaluation is made the amount loaned is in excess of sixty per cent, or in the case of unimproved and unproductive real estate in excess of forty per cent, of the value of the premises mortgaged, a sufficient reduction in the amount of the loan shall be required, as promptly as may be practicable, to bring the loan within sixty per cent, or in the case of unimproved and unproductive real estate within forty per cent of the value of said premises.

Whenever in the opinion of the Commissioner an excessive loan has been made, or is about to be made, upon real estate, he shall have authority to cause an appraisal of said real estate to be made at the expense of the bank making the loan. One appraiser shall be named by the Commissioner, one by the bank making the loan, and a third by the two thus named. Said appraisers shall determine the value of said real estate and certify the same in writing to the Commissioner and to the bank. If it shall appear from said appraisal that said loan is in excess of the amount allowed by the provisions of this section, the Commissioner may make such order in relation thereto as he may deem advisable.

PUBLIC FUNDS.

Second. (a) In the public funds of the United States, or of any of the New England states.

(b) In the bonds or notes of a county, city or town of this commonwealth.

(c) In the bonds or notes of an incorporated district in this commonwealth whose net indebtedness does not exceed five per cent of the last preceding valuation of the property therein for the assessment of taxes.

(d) In the bonds or notes of any city of Maine, New Hampshire, Vermont, Rhode Island or Connecticut, whose net indebtedness does not exceed five per cent of the last preceding valuation of the property therein for the assessment of taxes; or of any county or town of said states whose net indebtedness does not exceed three per cent of such valuation; or of any incorporated water district of said states which has within its limits more than five thousand inhabitants, and whose bonds or notes are a direct obligation on all the taxable property of such district, and whose net indebtedness does not exceed three per cent of such valuation: provided, that there is not included within the limits of such water district, either wholly or in part, any city or town the bonds or notes of which are not a legal investment.

(e) In the legally authorized bonds of the states of New York, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Missouri and Iowa, and of the District of Columbia, and in the legally authorized bonds for municipal purposes, and in the refunding bonds issued to take up at maturity bonds which have been issued for other than municipal purposes, but on which the interest has been fully paid, of any city of the aforesaid states which has at the date of such investment more than thirty thousand inhabitants, as established by the last national or state census, or city census certified to by the city clerk or treasurer of said city and taken in the same manner as a national or state census, preceding such investment, and whose net indebtedness does not exceed five per cent of the valuation of the taxable property therein, to be ascertained by the last preceding valuation of property therein for the assessment of taxes; and of any city of the aforesaid states or of any of the New England

states or of the states of Maryland and Kentucky, which has at the date of such investment more than two hundred thousand inhabitants, so established, and whose net indebtedness does not exceed seven per cent of the valuation of the taxable property therein, established and ascertained as above provided.

In subdivisions (d) and (e) of this clause the words "net indebtedness" mean the indebtedness of a county, city, town or district omitting debts created for supplying the inhabitants with water and debts created in anticipation of taxes to be paid within one year, and deducting the amount of sinking funds available for the payment of the indebtedness included.

RAILROAD BONDS.

Massachusetts Railroads.

Third. (a) In the bonds or notes, issued in accordance with the laws of this commonwealth, of a railroad corporation incorporated therein the railroad of which is located wholly or in part therein, which has paid in dividends in cash an amount equal to not less than four per cent per annum on all its outstanding issues of capital stock in each fiscal year for the five years next preceding such investment, or in the first mortgage bonds of a terminal corporation incorporated in this commonwealth and whose property is located therein, which is owned and operated, or the bonds of which are guaranteed as to principal and interest, or assumed, by such railroad corporation. Any shares of the capital stock of a railroad corporation leased to such railroad corporation, which are owned by said lessee corporation, shall not be considered as outstanding within the meaning of this subdivision.

New England Railroads.

(b) In the bonds or assumed bonds of a railroad corporation incorporated in any of the New England states, at least one-half of the railroad of which is located in said states, whether such corporation is in possession of and is operating

its own road or is leased to another railroad corporation: provided, either that such bonds shall be secured by a first mortgage of the whole or a part of the railroad and railroad property of such corporation or by a refunding mortgage as described in paragraph (3) or (4) of subdivision (g), or that if the railroad and railroad property of such corporation are unencumbered by mortgage such bonds shall be issued under the authority of one of said states which provides by law that no such railroad corporation which has issued bonds shall subsequently execute a mortgage upon its road, equipment and franchise or upon any of its real or personal property, without including in and securing by such mortgage all bonds previously issued and all its preëxisting debts and liabilities, which provision, so enacted in such state, shall have been accepted by the stockholders of such corporation; and provided, that such corporation has paid in dividends in cash an amount equal to not less than four per cent per annum on all its outstanding issues of capital stock in each fiscal year for the five years next preceding such investment.

(c) In the first mortgage bonds or assumed first mortgage bonds or in the bonds secured by a refunding mortgage as described in paragraphs (3) or (4) of subdivision (g), of a railroad corporation incorporated in any of the New England states, the railroad of which is located wholly or in part therein, which have been guaranteed as to principal and interest by a railroad corporation described in subdivisions (a) or (b) which is in possession of and is operating its own road.

(d) No bond shall be made a legal investment by subdivision (b) unless the corporation which issued or assumed such bond has, during its fiscal year next preceding the date of such investment, paid in dividends on its capital stock an amount equal to one-third of the total amount of interest paid on all its direct and assumed funded indebtedness.

No bond shall be made a legal investment by subdivision (c) unless the corporation which guaranteed such bond has, during its fiscal year next preceding such investment, paid in dividends on its capital stock an amount equal to one-

third of the total amount of interest paid on all its direct, assumed and guaranteed funded indebtedness.

Other Railroads.

Description of Corporation.

(e) In the mortgage bonds, as described in any of the following subdivisions of this clause, of any railroad corporation incorporated under the laws of any of the United States:

Provided, that during each of the ten fiscal years of such railroad corporation next preceding the date of such investment,—

(1) Such railroad corporation owned in fee not less than five hundred miles of standard gauge railroad, exclusive of sidings, within the United States, or if such corporation owned in fee less than five hundred miles of such railroad, the gross earnings of such corporation, reckoned as hereinafter provided, shall have been not less than fifteen million dollars;

(2) Such railroad corporation shall have paid the matured principal and interest of all its mortgage indebtedness;

(3) Such railroad corporation shall have paid in dividends in cash to its stockholders an amount equal to at least four per cent upon all its outstanding capital stock;

(4) The gross earnings from the operation of the property of such railroad corporation, including therein the gross earnings of all railroads leased and operated or controlled and operated by said corporation, and the gross earnings from the sale of coal from mines owned or controlled by it, shall not have been less in amount than five times the amount necessary to pay the interest payable upon its entire outstanding indebtedness, the rentals of all leased lines, and the interest on all the outstanding indebtedness of railroads controlled and operated which is not owned by said corporations after deducting from said interest and rentals interest and dividends received from the stocks, bonds or notes of railroad corporations not operated by said corporation, which have been deposited with a trustee as the only security to secure the payment of bonds or notes issued by said corpora-

tion, but not in excess of the interest on said last-named bonds or notes;

And further provided, that,—

(5) No bonds shall be made a legal investment by subdivision (g) in case the mortgage securing the same shall authorize a total issue of bonds which, together with all outstanding prior debts of the issuing or assuming corporation, including all bonds not issued that may legally be issued under any of its prior mortgages or of its assumed prior mortgages, after deducting therefrom, in case of a refunding mortgage, the bonds reserved under the provisions of said mortgage to retire prior lien debts at maturity, shall exceed three times the outstanding capital stock of said corporation at the date of such investment;

(6) No bonds shall be made a legal investment by subdivision (i) or (j) in case the mortgage securing the same shall authorize a total issue of bonds which, added to the total debt of the guaranteeing corporation as defined in paragraph (5), including therein the authorized amount of all previously guaranteed bond issues, shall exceed three times the capital stock of such guaranteeing corporation outstanding at the date of such investment; nor in case at said date the total debt of the corporation which issued said bonds shall exceed three times its outstanding capital stock;

In the case of a mortgage executed prior to the passage of this act, under which the total amount of bonds which may be issued is not specifically stated, the amount of bonds outstanding thereunder at the date of such investment shall be considered, for the purposes of paragraph (5) and of this paragraph, as the total authorized issue;

(7) Any railroad corporation which is mentioned in subdivision (e) of clause fourth of section twenty-six of chapter one hundred and thirteen of the Revised Laws shall be considered as having complied with all the requirements of this subdivision preceeding paragraph (5) up to and including the fiscal year of said corporation in which this act is passed.

Description of Bonds.

Definition of First Mortgage.—(f) Whenever the term “first mortgage” is used in the following subdivisions, it shall mean, unless otherwise qualified, a first mortgage on not less than seventy-five per cent of the railroad owned in fee at the date of the mortgage by the railroad corporation on the railroad of which said mortgage is a lien, but in no case on less than one hundred continuous miles of standard gauge railroad, exclusive of sidings: provided, that,—

Seventy-five per cent of the railroad subject to the lien of said mortgage is connected;

For five years prior to the date of investment therein all the railroad subject to the lien of said mortgage at the date of execution thereof has been operated by, and its operations included in, the operations of the railroad corporation which issues, assumes or guarantees said bonds;

The date of said mortgage is at least five years prior to the date of such investment; except that a first mortgage given in substitution for and not greater in amount than such a first mortgage, and covering the same railroad property, shall be considered to be in accordance with this requirement.

Direct Obligations.—(g) Bonds issued or assumed by a railroad corporation described in subdivision (e), which are secured by a mortgage which was at the date thereof or is at the date of such investment:—

(1) A first mortgage on a railroad owned in fee by the corporation issuing or assuming said bonds, except that, if it is not a first mortgage on seventy-five per cent of all such railroad owned in fee by said corporation, it shall be a first mortgage on at least seventy-five per cent of the railroad subject to the lien of said mortgage at the date thereof; but if any stocks or bonds are deposited with the trustee of said mortgage as part security therefor, representing or covering railroad mileage not owned in fee, the bonds secured by said mortgage shall not become legal investments unless said corporation owns in fee at least seventy-five per cent of the total

mileage which is subject to the lien of said mortgage and which is represented or covered by said stocks or bonds;

(2) A first mortgage, or a mortgage or trust indenture which is in effect a first mortgage upon all the railroad subject to the lien of said mortgage or trust indenture by virtue of the irrevocable pledge with the trustee thereof of an entire issue or issues of bonds which are a first lien, upon the railroad of a railroad corporation which is owned and operated, controlled and operated or leased and operated by the corporation issuing or assuming said bonds;

(3) A refunding mortgage which covers at least seventy-five per cent of the railroad owned in fee by said corporation at the date of said mortgage and provides for the retirement of all outstanding mortgage debts which are a prior lien upon said railroad owned in fee and covered by said refunding mortgage at the date thereof; but if any of the bonds which said refunding mortgage is given to refund are secured on a railroad not owned in fee by the corporation executing said refunding mortgage, there shall be conveyed and assigned to the trustee of said refunding mortgage either

At least seventy-five per cent of the railroad on which each issue of bonds to be refunded is secured, free from any mortgage lien except that of the mortgage or mortgages securing the bonds to be refunded, or

At least seventy-five per cent of the outstanding bonds of each issue which is secured by a mortgage lien upon such railroad; and all of said railroad not owned in fee which is so subjected to the lien of said refunding mortgage shall be the railroad of one or more railroad corporations which are owned and operated, controlled and operated, or leased and operated by the corporation issuing or assuming said refunding mortgage bonds;

But in no case shall the bonds secured by said refunding mortgage become a legal investment unless they mature at a later date than any bonds which said refunding mortgage is given to refund, nor unless the total mileage subjected to the lien of said refunding mortgage in accordance with the requirements of this paragraph is at least twenty-

five per cent greater than the mileage covered by any one of the mortgages securing bonds which said refunding mortgage is given to refund;

(4) A mortgage upon not less than ten per cent of the railroad, exclusive of sidings, owned in fee at the date of said mortgage by the corporation issuing or assuming said bonds, but in no case on less than five hundred continuous miles of standard gauge railroad: provided, that,—

Said mortgage is a first or second lien upon not less than seventy-five per cent of the total railroad covered by said mortgage at the date thereof, and which provides for the retirement of all mortgage debts which are a prior lien upon said railroad owned in fee and covered by said mortgage, at the date of the execution thereof;

The bonds secured by said mortgage mature at a later date than, and cover a mileage at least twenty-five per cent greater than is covered by, any of the bonds secured by a prior lien mortgage so to be retired;

The date of said mortgage shall be at least five years prior to the date of such investment.

Bonds Underlying Refunding Mortgage.—(h) Mortgage bonds or bonds secured by mortgage bonds which are a direct obligation of, or which have been assumed, or which have been guaranteed by endorsement as to both principal and interest, by a railroad corporation whose refunding mortgage bonds are made a legal investment under paragraphs (3) or (4) of subdivision (g): provided, that:—

Said bonds are prior to and are to be refunded by such refunding mortgage;

Said refunding mortgage covers all the real property upon which the mortgage securing said underlying bonds is a lien;

In the case of bonds so guaranteed or assumed the corporation issuing said bonds is owned and operated, controlled and operated, or leased and operated, by said railroad corporation.

Guaranteed Obligations.—(i) Bonds which have been guaranteed by endorsement as to both principal and in-

terest by a railroad corporation which has complied with all the provisions of subdivision (e): provided that,—

Said bonds are secured by a first mortgage on the railroad of a railroad corporation which is owned and operated, controlled and operated, or leased and operated, by the corporation guaranteeing said bonds;

In the case of a leased railroad, the entire capital stock of which, except shares qualifying directors, is not owned by the lessee, the rental includes an amount to be paid to the stockholders of said leased railroad equal to at least four per cent per annum upon that portion of the entire capital stock thereof outstanding which is owned by the lessee.

(j) First mortgage bonds of a railroad corporation which during each of its ten fiscal years next preceeding the date of such investment has complied with all the requirements of paragraphs (2), (3) and (4) of subdivision (e), provided that said bonds are guaranteed by endorsement as to both principal and interest by a railroad corporation which has complied with all the requirements of subdivision (e) preceeding paragraph (5), notwithstanding that the railroad of said issuing corporation is not operated by said guaranteeing corporation.

**Corporations Not to Lose Credit by Temporary Disturbance of Relation
of Gross Earnings to Fixed Charges.**

(k) Bonds which have been or shall become legal investments under any of the provisions of this act shall not be rendered illegal although the corporation issuing, assuming or guaranteeing such bonds shall fail for a period not exceeding two successive fiscal years to comply with the requirements of paragraph (4) of subdivision (e); but no further investment in the bonds issued, assumed or guaranteed by said corporation shall be made during said period. If after the expiration of said period said corporation complies for the following fiscal year with all the requirements of subdivision (e), it shall be regarded as having complied therewith during said period.

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Bonds Not to Become Illegal on Account of Consolidation.

(1) Bonds which have been or shall become legal investments under any of the provisions of this act shall not be rendered illegal, although the property upon which they are secured has been or shall be conveyed to or legally acquired by another railroad corporation, and although the corporation which issued or assumed said bonds has been or shall be consolidated with another railroad corporation, if the consolidated or purchasing corporation shall assume the payment of said bonds and so long as it shall continue to pay regularly interest or dividends, or both, upon the securities issued against, in exchange for, or to acquire the stock of the corporation consolidated, or the property purchased, or upon securities subsequently issued in exchange or substitution therefor, to an amount at least equal to four per cent per annum upon the capital stock outstanding at the time of such consolidation or purchase of said corporation which issued or assumed said bonds.

Credit of a Corporation Not to be Lost by Consolidation.

(m) If a railroad corporation which has complied with all the requirements of subdivision (e) preceding paragraph (5), except that the period of compliance is less than ten, but not less than five successive years, shall be, or shall have been, thereupon consolidated or merged with, or its railroad purchased and all of the debts of such corporation assumed by, another railroad corporation incorporated under the laws of any of the United States, such corporation so succeeding shall be considered as having complied with all the provisions of subdivision (e) preceding paragraph (5) during those successive years next preceding the date of such consolidation, merger or purchase in which all said consolidated, merged or purchased corporations, if considered as one continuous corporation in ownership and possession, would have so complied: provided, that said succeeding corporation shall continue so to comply for a further period which shall make

such compliance equivalent to at least ten successive years, but which shall be in no case less than the two fiscal years next following said consolidation, merger or purchase.

Street Railway Corporations Are Not Railroad Corporations.

(n) In this act, unless the context otherwise requires, "railroad corporation" means a corporation which owns or is in possession of and operating a railroad or railway of the class usually operated by steam power. Street railway corporations are not railroad corporations within the meaning of this act.

Present Investments Not to Become Illegal.

Fourth. The provisions of this act shall not render illegal the investment in any mortgages of real estate held by such corporation at the time of its passage, nor the investment at such time or thereafter in any issue of bonds or notes dated prior to its passage, in which such corporation was then authorized to invest, so long as such bonds or notes continue to comply with the requirements of law then in force.

STREET RAILWAY BONDS.

Fifth. In the bonds of any street railway company incorporated in this commonwealth, the railway of which is located wholly or in part therein, and which has earned and paid in dividends in cash an amount equal to at least five per cent upon all its outstanding capital stock in each of the five years last preceding the certification by the board of railroad commissioners hereinafter provided for. No such investment shall be made unless said company appears from returns made by it to the board of railroad commissioners to have properly paid such dividends without impairment of assets or capital stock, and said board shall on or before the fifteenth day of January in each year certify and transmit to the bank commissioner a list of such street railway companies.

Dividends paid by way of rental to stockholders of a leased

street railway company shall be deemed to have been earned and paid by said company within the meaning of this clause, provided that said company shall have annually earned, and properly paid in dividends in cash, without impairment of assets or capital stock, an amount equal to at least five per cent upon all its outstanding capital stock in each of the five fiscal years next preceding the date of the lease thereof.

If two or more street railway companies have been consolidated by purchase or otherwise during the five years prior to said certification, the payment severally from the earnings of each year of dividends equivalent in the aggregate to a dividend of five per cent on the aggregate capital stocks of the several companies during the years preceding such consolidation shall be sufficient for the purpose of this act.

TELEPHONE COMPANY BONDS.

Sixth. In the bonds of any telephone company subject to the provisions of section thirty-seven of chapter fourteen of the Revised Laws, and of which a majority of the directors are residents of the commonwealth:—

Provided, that during each of the five fiscal years of such telephone company next preceding the date of such investment—

(1) The gross income of such telephone company shall have been not less than ten million dollars per annum.

(2) Such telephone company shall have paid the matured principal and interest of all its indebtedness.

(3) Such telephone company shall have paid in dividends in cash an amount equal to not less than six per cent per annum on all its outstanding issues of capital stock.

(4) The dividends paid on the capital stock of such telephone company shall not have been less than the total amount necessary to pay the interest upon its entire outstanding indebtedness.

And further provided, that such bonds shall be secured either (a) by a first mortgage upon at least seventy-five per cent of the property of such telephone company, or (b) by

the deposit with a trust company incorporated under the laws of this commonwealth of bonds and shares of stock of other telephone corporations, under an indenture of trust which limits the amount of bonds so secured to seventy-five per cent of the value of the securities deposited as stated and determined in said indenture, and provided that during each of the five years next preceeding such investment the annual interest and dividends paid in cash on the securities deposited have amounted to not less than fifty per cent in excess of the annual interest on the bonds outstanding and secured by said deposit. Not more than two per cent of the deposits of any savings bank shall be invested in the bonds of telephone companies.

BANK STOCKS AND DEPOSITS IN BANKS.

Seventh. In the stock of a banking association located in the New England states and incorporated under the authority of the United States, or in the stock of a trust company incorporated under the laws of and doing business within this commonwealth, but such corporation shall not hold, both by way of investment and as security for loans, more than twenty per cent of its deposits in the stock of such associations or companies, nor in any one such association or company more than three per cent of its deposits in, nor more than one hundred thousand dollars nor more than one-quarter of the capital stock of, such association or company.

Such corporation may deposit not more than two and one-half per cent of its deposits in any banking association incorporated under the authority of the United States and located in this commonwealth, and in any trust company incorporated in this commonwealth; but such deposit shall not in any case exceed five hundred thousand dollars nor twenty-five per cent of the capital stock and surplus fund of such depository.

LOANS ON PERSONAL SECURITY.

Eighth. In loans of the classes hereafter described, payable and to be paid or renewed at a time not exceeding one

year from the date thereof; but not more than one-third of the deposits and income shall so be invested, nor shall the total liabilities to such corporation of a personal partnership, association or corporation for money borrowed upon personal security, including in the liabilities of a partnership or company not incorporated the liabilities of the several members thereof, exceed five per cent of such deposits and income; but said limitations, except as to time in which said loans shall be paid or renewed, shall not apply to loans made under the provisions of paragraph (2) of subdivision (e) of this clause.

(a) A note which is the joint and several obligation of three or more responsible citizens of this commonwealth: provided, that the total liabilities to such corporation of a person, partnership or association, for money borrowed under this subdivision, including in the liabilities of a partnership or company not incorporated the liabilities of the several members thereof, shall not exceed one per cent of the deposits of such corporation.

(b) A note, with one or more substantial sureties or endorsers: (1) Of a corporation incorporated in this commonwealth; or (2) Of a manufacturing corporation with a commission house as surety or endorser, provided that such commission house is incorporated in this commonwealth, or has an established place of business and a partner resident therein; or (3) Of an association or corporation at least one-half of the real and personal property of which is located within the New England states, provided that at least one such surety or endorser shall be a citizen of or corporation incorporated in this commonwealth: provided, that no such loan shall be made or renewed unless within eighteen months next preceding the making or renewing of such loan an examination of the affairs, assets and liabilities of the borrowing corporation or association has been made, at the expense of such borrowing corporation or association, by an accountant approved by the commissioner. The report of such examination shall be made in such form as the commissioner may prescribe. A copy of the report certified to by the accountant shall be delivered by the borrowing corporation or association to the savings bank

before such loan or a renewal thereof is made, and a copy so certified shall be delivered by the accountant to the commissioner within thirty days after the completion of said examination.

(c) A bond or note of a gas, electric light, telephone or street railway corporation incorporated or doing business in this commonwealth and subject to the control and supervision thereof; provided, that the net earnings of said corporation after payment of all operating expenses, taxes and interest, as reported to, and according to the requirements of, the proper authorities of the commonwealth, have been in each of the three fiscal years next preceding the making or renewing of such loan equal to not less than four per cent on all its capital stock outstanding in each of said years; and provided, that the gross earnings of said corporation in the fiscal year next preceding the making or renewing of such loan have been not less than one hundred thousand dollars.

(d) A bond or note issued, assumed, or guaranteed by endorsement as to both principal and interest, by a railroad corporation which complies with all the requirements of subdivision (b), or of subdivision (e) preceding paragraph (5) of clause Third: provided, that the principal of such bond or note described in either this or the preceding subdivision is payable at a time not exceeding one year after the date of investment therein.

(e) A note of a responsible borrower in such form as the commissioner may approve, with a pledge as collateral of:—

(1) One or more first mortgages of real estate situated in this commonwealth; provided, that the amount of such note is not in excess of sixty per cent, or in the case of unimproved or unproductive real estate in excess of forty per cent, of the value of the property or properties mortgaged; that the value of each of said properties has been certified in accordance with the provisions of clause First; and that the assignment of each of said mortgages has been recorded in the proper registry of deeds.

(2) Bonds or notes authorized for investment by clauses Second, Third, Fourth, Fifth or Sixth at no more than ninety per cent of the market value thereof, at any time while such note is held by such corporation; or

(3) Deposit books of depositors in savings banks at no more than ninety per cent of the amount of deposits shown therein; or

(4) Shares of railroad corporations described in subdivisions (a), (b) or (c) of clause Third at no more than eighty per cent of the market value thereof, at any time while such note is held by such corporation; or

(5) Such other bonds, notes or shares of corporations or associations and at such percentages of their market values as the board of investment shall approve; provided, that if the commissioner shall disapprove any such bonds, notes or shares, he shall make such recommendations in writing to the board of investment of such corporation as the case may require, and shall include in his annual report a statement of the facts in each case in which such board of investment has not complied with his recommendations in a manner satisfactory to him.

(f) Whenever used in this clause, the word "association" means an association the business of which is conducted or transacted by trustees under a written instrument or declaration of trust.

Section Fourteen, added by the laws of 1913, provides that bonds which have been legal investments for ten successive years under the provisions of subdivisions (a), (b), (c) or (d), of clause Third, Fifth or Sixth, shall not be rendered illegal for failure of the corporation to comply with the dividend requirements for two years. But no further purchases of such bonds shall be made until the corporation has complied with the provisions of the law.

Investments Outside of the State.

From the early case of *Harvard College v. Amory*, 26 Mass. 446, the courts of Massachusetts have been reasonable in approving investments made by trustees in good faith. Corporate stocks and bonds and, in especial cases, real property without the state have been

held to be proper investments. But an investment in real estate outside of the commonwealth should not be sustained unless, first, the trust funds were so invested when they came into the custody of the trustees; second, where the will authorizes such an investment; third, in exceptional cases where such an investment may be necessary to protect or secure other investments involved in the trust. In *Amory v. Green*, 95 Mass. 413, trustees were permitted to invest in a homestead in another state for the benefit of the *cestui que trust*, because the authority given in the will was broad enough to justify it. And where such an investment constitutes a small part of the estate and the trustees have exercised good faith, the legality of the investment will be upheld. *Thayer v. Dewey*, 185 Mass. 68.

Second Mortgage.

Investment in a second mortgage may not be inconsistent with sound discretion on the part of trustees. *Taft v. Smith*, 186 Mass. 31.

Corporate Stock.

A testator devised funds to trustees to invest in "safe and productive stock, either in the public funds, bank shares or other stock according to their best judgment and discretion." The trustees retained certain shares of bank stock, shares in an insurance company and in a manufacturing company. The court decided that the words used in the will were broad enough to give the trustees authority to make such an investment. *Harvard College v. Amory*, 26 Mass. 446.

A trustee invested at one time \$3,573 in Union Pacific stock and later \$2,475. This amounted to more than one-third of the estate. The Union Pacific was then a new road. The second investment in such stock was not approved, because it was not made in the exercise of sound discretion. Trustees are permitted to invest portions of a trust fund in stocks of private business corporations when the corporations have acquired, by reason of the amount of their property, and the prudent management of their affairs, such a reputation that cautious persons commonly invest in such securities. *Appeal of Dickinson*, 152 Mass. 184.

Shares of stock in a corporation were turned over to trustees in 1870. In 1881 the stock was at par, but from that time on it depreciated in value until the corporation failed in 1885. Upon these facts the court refused to say that the trustees, who were men of good business capacity, lacked sound discretion simply because their judgment was wrong. *Green v. Crapo*, 181 Mass. 55.

A guardian loaned his ward's money upon an individual note secured by stock at the rate of three-fourths of its value. There being no bad faith, the investment was proper for a guardian. The English rule does not apply. *Lovell v. Minot*, 37 Mass. 116.

Trust Company Stock.

A trustee may invest the funds in trust company stock. *Sheffield v. Parker*, 158 Mass. 330.

Bonds.

Where trustees sold government bonds and invested in bonds of a small railroad which were guaranteed by two large railroads, they were not chargeable with mismanagement. *Green v. Crapo*, 181 Mass. 55.

A will authorized trustees to "use their own judgment as to investing the moneys," but at the same time recommended the propriety of keeping at least half of the estate invested in mortgages on unencumbered realty. The trustees sold United States bonds and invested practically all of the funds in railroad bonds which depreciated in value. Since the will gave the trustees wide discretion and since they had acted in good faith, they were not chargeable with the loss. *Brown v. French*, 125 Mass. 410.

Percentage of Fund Which May Be Invested in Fluctuating Securities.

Where the trust estate amounted to \$30,000, and the trustees invested at one time \$6,500 in the stocks and bonds of a railroad company, and at another, over \$5,000, the court decided that the second investment was improperly made, because the first investment in such securities represented about one-quarter of the estate. *Davis, Appellant*, 183 Mass. 499.

In the appeal of *Dickinson*, 152 Mass. 184, evidence was given to show that conservative trustees did not invest more than one-third of a trust fund in fluctuating securities, including all kinds of stocks, and did not place more than five per cent of the money in one class of such securities.

But in *Brown v. French*, 125 Mass. 410, where a trustee invested practically all of the estate in railroad bonds, no mention was made of the fact. Apparently the right of trustees to use their own judgment in good faith absolved them from the rule requiring only a portion of the money to be invested in fluctuating securities.

Retaining Investments Made by Testator.

If a testator has invested funds to remain permanently in stock, that fact may well be considered by the trustee when called upon to exercise his best judgment and discretion. This may always be considered as tending to the discharge of the trustee. *Harvard College v. Amory*, 26 Mass. 446.

Stock of a railroad which was depreciating in value came into the hands of a trustee. He continued the investment in good faith, thinking it would be a sacrifice to sell. There was no liability for the loss. *Bowker v. Pierce*, 130 Mass. 262.

Manufacturing Business.

A trustee invested funds in machinery, fixtures and patent rights of a manufacturing concern. This amounts to a misappropriation of funds and makes all persons who knowingly engage in it accountable as trustees. *Trull v. Trull*, 95 Mass. 407.

Purchasing His Own Mortgage.

A trustee purchased from himself with the trust funds a mortgage upon property which, at the time, was worth less than the fund. Such an investment was improper and the trustee was liable. *Appeal of Nichols*, 157 Mass. 20. See also *McKim v. Glover*, 161 Mass. 418.

Must Appropriate the Investment to the Trust.

When an investment is made, the trustee must, by act, appropriate it to the trust. He cannot purchase and retain in a doubtful capacity. *Sheffield v. Parker*, 158 Mass. 330.

Time of Judgment as to Value.

The question of the lawfulness and fitness of an investment must be determined as of the time when it is made, and not by subsequent facts which could not have been anticipated. *Brown v. French*, 125 Mass. 410.

Purchasing Half of Property When Estate Owns the Other Half.

Where the trust estate owns an undivided half interest in property and the property is to be sold at a sacrifice, it is the duty of the trustee, if he has money of the estate for investment and can buy at a low price, to purchase the property and thus protect the estate. *Pine v. White*, 175 Mass. 585.

Effect of Words Giving Full Power to Invest.

The words "with full power to make purchases, investments and exchanges in such manner as to them shall seem expedient: it being my intention to give my said trustees the same dominion and control over said trust property as I now have" are enabling words, giving the trustees full power to deal with the estate, but they do not release the trustees from the duty to exercise sound judgment and discretion in selecting investments. *Davis, Appellant*, 183 Mass. 499.

If instructions regarding investments in certain securities are contained in the trust instrument, they must be followed explicitly. *City Missionary Soc. v. Memorial Church*, 186 Mass. 531.

Purchase of Certificate of Deposit.

A trustee who purchases a certificate of deposit, issued by a national bank in good standing, is not liable for loss due to failure of the bank before the certificate is due. *Hunt, Appellant*, 141 Mass. 515.

Consent of Widow to Investment Not Waived by Waiver of Her Personal Rights Under Will.

Where a widow renounces her rights under a will and takes under law, her waiver does not abrogate a clause which provides that no change in investments shall be made without her consent. *Plympton v. Plympton*, 88 Mass. 178.

Improvements and Repairs.

The general rule is that repairs must be made out of income, and substantial improvements out of capital. When repairs and substantial improvements are so closely related as to be inseparable, the expense should be apportioned by the trustee according to his best judgment. *Little v. Little*, 161 Mass. 188.

The expense of putting property in condition to be leased may be considered a part of the original purchase price, while the expense of keeping it in repair would in general be chargeable to income. *Parsons v. Winslow*, 16 Mass. 361.

Where rents are increased as a result of repairs and the beneficiary reaps the benefit, the trustee should be allowed the expense of making the repairs. *Rathbun v. Colton*, 32 Mass. 471; *Root v. Yeomans*, 32 Mass. 488.

Where the trustee has full power to invest, reinvest and change any and all property of the estate, he may repair the property in such a manner as to increase the value of the estate. *Sohier v. Eldredge*, 103 Mass. 345.

A trustee is justified in tearing down an old building and erecting a new one where a prudent business man would do so to secure a fair income, having regard to the amount which such investment would bear in relation to the trust fund as a whole. But unless the trust instrument exempts the trustee from liability, an investment in such a manner of \$850,000, out of an estate of \$920,000, is too large a proportion. *Warren v. Pazolt*, 203 Mass. 329.

Where a trustee having wide discretion makes extensive repairs of a large estate for the purpose of keeping the income at a fixed standard the expenses should be allowed out of the income. *Jordan v. Jordan*, 192 Mass. 337.

Guardians.

With reference to guardians the laws provide that the court may make such order for the management and investment of the estate as the case may require. Revised Laws, 1902, Guardianship, Sec. 35.

Another section of the statutes provides for a sale of the ward's property and investment by the guardian "according to his best judgment." Revised Laws, Vol. 2, p. 1319.

It would seem, therefore, that a guardian may follow the general rules governing trustees in the investment of trust funds.

MICHIGAN.

TRUST COMPANIES.

Howell's Statutes, 1913.

Part of Section 6486, Relating to Trust Companies.—And such board of directors may invest or loan the balance of its capital stock and other moneys received by such corporation in trust, in bonds secured by mortgages, or notes and mortgages on unencumbered real estate within the State of Michigan, worth double the amount secured thereby, or in public stocks and bonds of the United States, or any state of the United States that has not defaulted on its principal or interest within ten years; or of any organized county or township, or incorporated city or village, or school district in this state, or in any other such state, duly authorized to be issued, or in such real or personal securities as they may deem proper.

TRUSTEES GENERALLY.

Sec. 12139. Whenever it shall become necessary or convenient in the settlement or distribution of the estate of a deceased person, to appoint a trustee to take charge of or invest and distribute any portion of such estate, the judge of probate shall have power, and it shall be his duty, on the application of any person interested in the estate, to appoint such trustee.

Sec. 12142. It shall be the duty of such trustee to invest or distribute the estate which shall be received by him, according to the direction of his warrant of appointment, and to account for such estate and the interest thereon, in such manner and at such times as the judge of probate shall order.

Guardians.—Section 11578 provides for the sale or transfer of property of the ward, under supervision of the judges of probate, with the right to invest the proceeds of such sale, to-

gether with any other money, in real estate or in any other manner that shall be for the best interest of all concerned.

Sec. 12068, Relating to the Sale of Property by Executors.—The court shall make all proper orders and directions from time to time for the management, investment and disposition of the moneys received from such sale, and the interest and income therefrom.

Trust to Carry on Business.

Where a trust is created for the purpose of carrying on a business for the benefit of creditors, the trustee should not assume extraordinary risks or depart radically from the provisions of the trust instrument. Enlarging the business and creating obligations not necessary for the business constitute a breach of duty. *Loud v. Winchester*, 52 Mich. 174; 64 Mich. 23.

Neglect to Invest.

Where a trustee has misappropriated a fund or neglected to invest it, the beneficiary will be presumed to have lost at least the lawful interest. *Perrin v. Lepper*, 72 Mich. 454.

Duty in General.

It is the duty of a trustee to work for the best interests of the estate, and to keep, manage and invest the property in such a manner that it can be turned over to beneficiaries within a reasonable time, free from any complications with his own property. *Perrin v. Lepper*, 72 Mich. 454.

Care Required.

The law requires trustees to exercise sound discretion and good faith in the investment of funds. *Caspari v. Cutcheon*, 110 Mich. 86.

When Chargeable With Interest.

Trustees are chargeable with interest only when they have received interest, or have used the money or have been negligent in paying over or have failed to invest. *Calkins v. Bump*, 120 Mich. 335.

Purchase by Beneficiaries From Trustee.

Where intelligent beneficiaries of mature years and fully informed of all the circumstances authorize the trustee to use trust money in the purchase of property which he owns, they cannot later claim that the transaction was invalid. *Skelding v. Dean*, 141 Mich. 143.

Mingling Funds.

Where a trust company holding money received from the sale of bonds in trust mingles it with general funds which it loans at interest it is liable for the legal rate of interest. *Union Trust Co. v. Preston Nat. Bank*, 144 Mich. 106.

Corporate Stock.

A devise by a testator of "five thousand dollars in cash arising from my property, such as windmill stock or any other source," to be held and controlled by F, trustee, and providing for payment of a specified yearly amount whether arising from dividends or interest, does not give the trustee, who received the money in cash, power to purchase stock from another son at excessive value. *Cropsey v. Johnston*, 137 Mich. 16.

Unsecured Notes.

In one respect the decisions are reasonably uniform. It is a generally accepted rule that it is not prudent to invest trust funds in unsecured notes of an individual or of a partnership. *Mich. Home Miss. Society v. Corning*, 164 Mich. 395.

Guardian.

Public securities have always been held lawful. A guardian cannot be censured for investing in these or in any legal interest, when it is the best which he finds readily obtainable. In the absence of contract he cannot be held for neglect beyond seven per cent, the legal rate. *Gott v. Culp*, 45 Mich. 265.

Personal Benefit, Rate of Interest.

A guardian may not reap any personal benefit from the management of the estate. When he neglects to keep funds separate from his own, he is chargeable with simple interest. When he is guilty of fraud or gross misconduct, he may be charged with annual or semi-annual rests. *Moyer v. Fletcher*, 56 Mich. 508.

Deposit in Savings Bank.

The length of time that a trustee should allow a fund to remain in a bank depends upon circumstances and the opportunity to invest. A guardian who permits money to remain in a savings bank at four per cent for over six months cannot for that reason be said to be negligent. *In re Grammel's Estate*, 120 Mich. 487.

Purchasing a Business.

When a trustee, with the consent of the beneficiary who is twenty years of age, purchases a business with trust funds and the beneficiary

continues to run the business for two years after she becomes of age, she ratifies the act of the trustee. *In re Shailer Estate*, 172 Mich. 600.

Continuing Business.

The law requires that an administrator shall take charge of all the personal estate, collect and convert it into money ready for distribution. He is required to exercise ordinary skill and prudence. *Loomis v. Armstrong*, 63 Mich. 355.

It follows that a trustee may not continue the testator's business unless authorized so to do. *Frey v. Eisenhardt*, 116 Mich. 160.

Even where they are expressly authorized to carry on a business, the trustees must follow strictly the provisions of the instrument. *Packard v. Kingman*, 109 Mich. 497.

MINNESOTA.

TRUST COMPANIES.

General Statutes, 1913.

Sec. 6412. Trust Company.—It may invest all moneys received by it in trust in authorized securities and shall be responsible to the owner or *cestui que trust* for the validity, regularity, quality, value, and genuineness of such investment and securities so made, and for the safe keeping of the securities and evidences thereof. Whenever special directions are given in any order, judgment, decree or will, or any other written instrument as to the particular manner or particular class or kind of securities or property in which any investment shall be made, it shall follow such directions, and in such case it shall not be further responsible by reason of the performance of such trust. In all other cases it may invest the same in any of said other securities, using its best judgment in the selection thereof, and shall be responsible for the validity, regularity, quality and value thereof at the time made, and for their safe keeping. It may, in its discretion, retain and continue any investment and security or securities coming into its possession in any fiduciary capacity.

Sec. 6415. Trust Funds, Investments of Accumulations.—Any amount not less than one hundred dollars, received by it as executor, administrator, or guardian, or other trustee, or by order of court, not required for the purposes of such trust, or not to be accounted for within one year, it shall invest as soon as practicable in authorized securities either then held by it or specially procured by it; and the income, less its proper charges, shall become part of the trust estate, and the net accumulations thereof shall be likewise invested, accounted for, and allowed in settlement of such trust.

Sec. 6393. Authorized Securities.—The trustees of any

savings bank shall invest the moneys deposited therein only as follows:

1. In the bonds or other interest-bearing obligations of the United States, or in securities for the payment of which and interest thereon the faith of the government is pledged.

2. In the bonds of any state which has not defaulted in payment of any bonded debt within ten years prior to the making of such investment.

3. In the bonds of any county, city, town, village, school, drainage, or other district created pursuant to law for public purposes in Minnesota, or in any warrant, order, or interest-bearing obligation issued by this state, or by any city, city board, town, or county therein, provided that the net indebtedness of any such municipality or district, as net indebtedness is defined by Revised Laws 1905, Sec. 777, and its amendments, shall not exceed ten per cent of its assessed valuation, or in the bonds of any county, city, town, village, school, drainage, or other district created pursuant to law for public purposes in Iowa, Wisconsin and North and South Dakota, or in the bonds of any city, county, town, village, school district, drainage, or other district, created pursuant to law for public purposes, in the United States containing at least thirty-five hundred inhabitants; provided, that the total bonded indebtedness of any such municipality or district shall not exceed ten per cent of its assessed valuation.

4. In notes or bonds secured by mortgages on unencumbered real estate in Minnesota, Wisconsin, Iowa, North Dakota, South Dakota and Montana, worth when improved at least twice, and when unimproved at least three times the amount loaned thereon. But not more than seventy per cent of the whole amount of the moneys of the bank shall be so loaned, and such investments shall be made only on report of a committee directed to investigate the same and report its value, according to the judgment of its members, and its report shall be preserved among the bank's records.

5. In notes secured by such bonds or mortgages as the bank under this section is authorized to invest in, but no such bond or mortgage shall be taken as collateral security for

more than its par value, nor shall the aggregate amount of securities taken be less than the full amount loaned thereon, and no such loan shall be made for a longer time than one year, nor to a greater amount to any one person than three per cent of the total deposits of the bank. No such bank shall loan in the aggregate, on the security specified in this paragraph, more than one-fourth of its deposits.

6. In the bonds of any railroad company, or the successor of any railroad company, which has received a land grant from the government, and whose bonds are secured by a first lien upon its railroad.

7. In the bonds of any other railroad company which are secured by first lien upon a railroad within the United States, or in the mortgage bonds of any such company, of an issue to retire all prior mortgage indebtedness thereof, or in the bonds of any railroad company in the United States which are guaranteed or assumed by another railroad company within the United States: Provided, that the railroad company, except one whose bonds are so guaranteed or assumed, either issuing, guaranteeing or assuming any of such bonds, has not within five years prior to such investment failed in the payment of a dividend upon its entire capital stock outstanding of not less than four per cent per annum each fiscal year, and has not within such time defaulted in the payment of any part of the principal or interest of any debt incurred by it and secured by trust deed or mortgage upon its road or any part thereof, or in the payment of any part of the principal or interest of any bonds guaranteed or assumed by it. But no such bank shall loan upon or invest in railroad bonds to an amount exceeding in the aggregate twenty per cent of its deposits, nor exceeding five per cent of its deposits in the bonds issued, guaranteed or assumed by any one railroad company.

8. In the debenture stock of any railroad company owning and operating a line of road in whole or in part within the state, provided that such stock shall bear interest at the rate of at least four per cent per annum, and shall be secured by trust deed as a first lien upon such line of railway, and

that not more than five per cent of its deposits shall be invested in such stock.

The term "authorized securities," whenever used in the Revised Laws, shall be understood as referring to the securities specified in this section.

Transfer by Trust Company of Its Own Mortgages.

The statutes authorizing trust companies to invest in certain securities do not abrogate the rule that a trustee may not deal with himself. Therefore, such companies may not transfer their own mortgages to themselves as trustees, even if such mortgages are legal investments. *St. Paul Trust Co. v. Strong*, 85 Minn. 1. But in 1903, section 6415 of the Statutes (*supra*) was passed permitting a trust company to invest in securities "held by it—or specially procured by it."

Interest Chargeable When Trustee Mingles Funds.

In the absence of fraud or flagrant breach of trust, simple interest only is chargeable against a trustee when he mingles the funds with his own or uses them in his private business. *St. Paul Trust Co. v. Strong*, 85 Minn. 1; *St. Paul Trust Co. v. Kittson*, 62 Minn. 408.

But a trustee is not to pay interest solely because he has deposited trust funds with his own or used them in his business. There must be in addition a breach of trust. The rule is discussed in *re Shotwell*, 49 Minn. 170.

Trustee May Not Acquire Property for His Own Benefit.

A trustee is utterly disabled from acquiring property for his own benefit, and it makes no difference whether there is fraud in the transaction or not. *Gilbert v. Hewetson*, 79 Minn. 326.

Certificates of Deposit.

Investments by a trust company in certificates of deposit issued by city banks and paying four per cent interest have been upheld, but the company may not invest in its own certificates of deposit. *St. Paul Trust Co. v. Kittson*, 62 Minn. 408.

Neglect to Invest.

A guardian who neglects to invest the funds of his ward is chargeable with interest at the legal rate after a reasonable time (six months). *Crosby v. Merriam*, 31 Minn. 342.

MISSISSIPPI.

GUARDIANS.

Code of 1906.

(With Amendments to 1914.)

Sec. 2416. Whenever the guardian shall have money of his ward not needed for current expenditures, or directed to be invested for the ward, he shall apply to the court, or chancellor in vacation, for directions as to the disposition he shall make of it; and the court or chancellor shall determine whether he shall lend it at interest, and upon what security, or how he shall dispose of it; and if the court or chancellor designated the person to whom the loan shall be made, or the security on which it shall be made, and the loan be so made, responsibility shall not attach thereafter to the guardian; but if the court or chancellor shall intrust him with discretion in the matter, he shall be bound for the exercise of sound judgment; and the court or chancellor may direct an investment in the bonds of the state or of any county or municipality thereof, or of a levee board, or of the United States. Any guardian who fails to report to the court the fact that he has money of his ward not needed or allowed to be used for current expenditures, and to ask the order of the court as to the disposition of such money, shall be chargeable with interest on the same, at the rate of ten per centum per annum during the time of failure.

Sees. 2419 and 2420 provide that the guardian may improve the land of the ward and change investments with the approval of the court of chancery.

Reasonable Diligence Required.

Trustees are required to use reasonable care and diligence in the management of the estate. If they mingle trust funds with their own they are chargeable with the loss. *Coffin v. Bramlitt*, 42 Miss. 194.

Order of Probate Court.

If a guardian loans his ward's money without an order of the probate court, he does so at his own risk. *Coffin v. Bramlitt*, 42 Miss. 194.

Duty to Invest.

If a trustee does not loan money he is chargeable with interest at ten per cent. Code of 1906, section 2416. This provision of the code seems to have been added to meet the rule in the earlier decisions and especially in *Reynolds v. Walker*, 29 Miss. 250, in which it was decided that a guardian is not liable for interest unless he has been directed by the probate court to invest, or has invested, or has used the funds in his business. The effect of the statute is to require investment under a court order.

Liability for Compound Interest.

Trustees are not liable for compound interest unless they have been guilty of fraud or have secretly made large profits in the use of the fund, or have mingled it with their own. *Crump v. Gerock*, 40 Miss. 765.

The beneficiary may elect to take the profits or the principal with compound interest. *Troup v. Rice*, 55 Miss. 278.

Stocks.

Where an executor retained railroad stocks under an honest mistake of judgment he is not liable for loss. *Troup v. Rice*, 55 Miss. 278.

May Not Acquire Interest in the Estate.

A trustee may not acquire directly or indirectly any personal interest in the estate. *Joor v. Williams*, 38 Miss. 546; *Scott v. Freeland*, 7 S. & M. 409.

One Year Allowed Administrator.

One year is allowed an administrator to collect the estate and make distribution. After one year he is chargeable with interest. If he makes any profit during the year he must account for it. *Anderson v. Gregg*, 44 Miss. 170.

MISSOURI.

TRUST COMPANIES.

Statutes of 1909.

(With Amendments to 1914.)

Sec. 1132. Investments.—The directors of corporations created under this article shall have power of investing the moneys placed in their charge in loans secured by real estate or other sufficient collateral security, in public bonds of the United States, or of this state, or in the bonds or stocks of any incorporated city or county in this state. Such corporations shall own only such real estate as may be required for the transaction of their business, and such as they may require in the enforcement and collection of debts or liabilities due to them.

Sec. 111. Executors and Administrators—Order of Court.
—If, on the return of the inventory, or at any other time, it shall appear to the satisfaction of the court that there is a surplus of money in the hands of the executor or administrator that will not shortly be required for the expenses of administration, or payment of debts, it shall have discretionary power to order him to lend out the money on such terms and for such time as may be deemed best.

Order of Court.

If an administrator loans funds of the estate without an order of court, he and his sureties are liable for all losses growing out of such loan. *Garesche v. Priest*, 9 A. 270; affirmed, 78 Mo. 126.

When Chargeable With Interest.

Interest may not be compounded for a simple breach of trust. *Cruce v. Cruce*, 81 Mo. 684. But when the trustee has speculated with the funds and the profit cannot be ascertained, or where he has used the money for his own purposes, the highest rate of interest may be charged. *Bobb v. Bobb*, 89 Mo. 421; *In re Davis*, 62 Mo. 454.

And where he mingles the funds with his own he is chargeable with interest although he has made none. *Bates v. Hamilton*, 144 Mo. 1; *In re Murdock*, 129 Mo. 499.

Must Comply Strictly With Provisions of Trust.

Where a trustee is directed to invest money in lands, he is not warranted in investing part as directed and expending the remainder in improving the land. *Gates v. Hunter*, 13 Mo. 511.

Donation to Induce Improvement of Surrounding Property.

Where a testator created a reserve fund to guard against loss, and authorized the trustees to invest and reinvest, it was proper for them to make a donation to a corporation preparing to erect a hotel near the property which would be of benefit to the estate. *Drake v. Crane*, 127 Mo. 85.

Guardian.

The power of a guardian to sell property of a ward and invest the proceeds must be obtained by an order of the probate court. *Woods v. Boots*, 60 Mo. 546.

The statutes do not require a guardian to invest in government securities, nor until 1865 did they require an investment in real estate securities. *Taylor v. Hite*, 61 Mo. 142. It seems that a guardian, under an order of court, may invest in public securities or upon real estate security at least double in value the amount loaned. Statutes of 1906, sections 3510, 3513, 3517.

Care Required.

A trustee must employ such diligence and prudence in the investment of funds as men of discretion and intelligence exercise in the management of their own affairs. *Taylor v. Hite*, 61 Mo. 142.

May Not Change Character of Property Unless it is Perishable.

Trustees have no power to change the character of trust property unless it is of a perishable nature. In such a case it must be converted into a permanent investment. *Garesche v. Levering Inv. Co.*, 146 Mo. 436; *Gamble v. Gibson*, 59 Mo. 595.

May Not Incorporate the Estate.

The power to sell and reinvest does not give trustees the right to convert the estate into a corporation. *Garesche v. Levering Inv. Co.*, 146 Mo. 436.

Depreciation of Securities.

A trustee who has invested in sufficient security is not responsible for later depreciation. *State v. Slevin*, 93 Mo. 253.

MONTANA.

TRUST COMPANIES.

Statutes of 1907.

(With Amendments to 1914.)

Sec. 3930. The board of directors of any such corporation are hereby authorized to invest the capital of said corporation, and keep the same invested, in good securities, and it is lawful for said corporation to make such investments of its capital, and the funds accumulated by its business, including money deposits, or any part thereof, in notes or bonds and mortgages on unencumbered real estate, within the state of Montana, and also on any and all stocks or bonds of this state, or any other state or territory of the United States, or the bonds of any county, city, town, or school district, of this state, legally authorized to issue such bonds.

TRUSTEES.

Sec. 5396. Investment of Money by Trustee.—A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

Sec. 5397. Interest, Simple or Compound, on Omission to Invest Trust Moneys.—If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.

Mingling Funds.

Where a trustee mingles trust funds with his own, the entire fund will be impressed with a trust for the benefit of the *cestui que trust*. *Yellowstone County v. First etc. Savings Bank*, 46 Mont. 439.

Care Required.

A trustee should exercise the same care and prudence in the management of the estate that men of ordinary diligence and prudence exercise in the management of their own affairs. *Roush v. Fort*, 3 Mont. 185.

Rate of Interest.

An executor who retains trust funds which he should have deposited in bank at interest cannot be compelled to pay arbitrary rates of interest or compound interest, especially when there is no fraud and he has returned the money and accounted for a higher rate than the banks would have paid. *In re Ricker's Estate*, 14 Mont. 153.

NEBRASKA.

TRUST COMPANIES.

Statutes of 1911, Ch. 31.

(With Amendments to 1914.)

Sec. 6. Subdivision 7. Trust companies have power to loan money upon real estate, not to exceed forty per cent of appraised value, and upon collateral security, but no property shall be taken as collateral except such property as would itself be a legal investment for the said Corporation under this Act; and to borrow money and to execute and issue its notes payable at a future date, and to pledge its real estate, securities, or other securities therefor. But no loan shall be made to any officer or director of the said Corporation. Sth. To buy, own, hold and sell Government, State, County and municipal bonds and stocks, warrants, bills of exchange, notes, mortgages and other investment securities, negotiable and non-negotiable. But it shall be unlawful for any Corporation organized under this Act to buy or own the bonds of any incorporation (other than municipal) or company, the interest on which has been in default for a period of two years next preceding the date of purchase, and it shall be unlawful for it to buy the stocks of any corporation except those that have earned annual dividends of at least four per cent per annum for at least three years just prior to the date of such purchase. No trust company shall buy, own or accept as collateral the stock of any Corporation organized under this Act.

EXECUTORS AND ADMINISTRATORS.

Annotated Statutes, 1909.

Sec. 5141. The executor or administrator shall not make profit by the increase, nor suffer loss by the decrease or de-

struction without his fault, of any part of the personal estate, and he shall account for the excess when he shall sell any part of the personal estate for more than the appraisal, and if he shall sell any for less than the appraisal, he shall not be responsible for the loss if it shall appear to be beneficial to the estate to sell it.

Guardians.—Sections 5394 and 5397 provide that a guardian must manage the ward's estate frugally and without waste and that the probate court may authorize a sale of the personal property and investment of the proceeds and any other money in real estate or in such other manner as shall be to the interest of the ward.

Deposit in Private Account.

Deposit of trust funds to the private account of a trustee amounts to a conversion to his own use. *Dirks v. Juel*, 59 Neb. 353.

Mingling Funds.

When a trustee mingles funds with his own, the trust attaches to the whole fund. *State v. Bank of Commerce*, 61 Neb. 181; *City of Lincoln v. Morrison*, 64 Neb. 822.

Purchasing Trust Property.

If a trustee purchases the trust property, the sale is voidable. The beneficiary may affirm or repudiate. *Shelby v. Creighton*, 65 Neb. 485.

Guardian.

Section 27, Chapter 34, of the laws of 1907, requires a guardian to obtain an order of court authorizing him to loan the ward's money. If he neglects to do this, he is liable for any loss. *In re Estate of O'Brien*, 80 Neb. 125.

NEVADA.

TRUST COMPANIES.

Laws of 1911.

(With Amendments to 1914.)

The laws of 1911 provide for the incorporation of banking corporations. The corporation organized under the act may state in its articles of incorporation that it will carry on a trust company business, and such corporation in addition to the powers conferred upon the banks shall have power to act as trustee under bonds and mortgages and to execute corporate or individual trusts, to act as executor, administrator, guardian or receiver. The same law under Section 6 provides for the following investments for savings banks and is apparently controlling with regard to trust companies. The funds of any savings bank, except the reserve provided for in this act, shall be invested in bonds of the United States, or of any state of the United States, or in the public debt or bonds of any city, county, township, village or school district of any state of the United States which shall have been lawfully issued; or may be loaned on negotiable paper secured by any of the above mentioned classes of security; or upon notes or bonds secured by mortgage lien upon unencumbered real estate; provided, that second mortgage loans may be made upon improved farm lands, but no loans shall be made upon such lands or other real estate which, including the aggregate amount of all encumbrances, shall exceed fifty per cent of the cash value thereof; or upon notes secured by collateral security of known marketable value; or shall be deposited in good solvent banks or held as cash; provided, also, that chattel mortgages shall not be deemed collateral security, and savings banks are prohibited from investing their funds in them.

Sec. 2964. Executors and Administrators.—Every executor and administrator shall be chargeable in his account with the whole of the estate of the deceased which should come to his possession at the value of the appraisement contained in the inventory, except as hereinafter provided, and with all the interest, profit and income of the estate.

Sec. 2965. He shall not make profit by the increase nor suffer loss by the decrease or destruction of any part of the estate without his fault. He shall account for the excess when he shall sell any part of the estate for more than the appraisement, and if any be sold for less than the appraisement, he shall not be responsible for the loss if the sale has been justly made.

Sec. 2968. No administrator or executor shall purchase any claim against the estate he represents; and if he shall buy any claim for less than its nominal value, he shall not charge in his account more than he has actually paid.

Repairs.

An executor will be allowed the expenses of reasonable repairs and improvements. Estate of Millenovich, 5 Nev. 161.

Renting.

When an executor has exercised proper diligence and good faith, he is not chargeable with loss to the estate. Renting property of the estate at a reasonable value, with a view to the desirability of the tenant, is all that can be expected of him. Estate of Millenovich, 5 Nev. 161.

Corporate Stock.

Corporate stock of doubtful value which comes into the hands of a trustee should be disposed of under an order of the probate court. Estate of Millenovich, 5 Nev. 161.

Guardian.

It seems that a guardian, if he would protect himself, should act only in accordance with an order of the probate court. Henderson v. Coover, 4 Nev. 429.

NEW HAMPSHIRE.

TRUSTEES GENERALLY.

Public Statutes, 1901.

(With Amendments to 1914.)

Chapter 198. Sec. 11. Trustees shall be accountable for and may be licensed to sell stocks, bonds, and other written evidences of debt, and shall, when not otherwise authorized, or directed, invest money and the proceeds of all real and personal property the same as prescribed for guardians.

Sec. 9. Every guardian of a minor shall invest, in the name of his ward, or in his own name as guardian, the money and the proceeds of all real and personal property of his ward—except stocks, bonds and other evidences of debt received as provided in the preceding section (permitting the retention of such securities)—in notes secured by mortgage of real estate at least double in value of the notes, in some incorporated savings bank in this state, or in the bonds or loans of this state, of some town, city, or county of this state, or of the United States, and in no other way.

(1895, Chapter 71. Sec. 1. Trustees and guardians shall be authorized to invest funds in their hands in the bonds or direct obligations of any county, city, town, school, fire, or water district in New England, when the net debt of said municipality does not exceed five per cent of the last assessment of taxes for the purpose of taxation. The term “net debt” shall be construed to denote the indebtedness of any municipality, omitting debt created for supplying the inhabitants with water, and deducting the amount of sinking funds available for the payment of the indebtedness of the municipality.)

Sec. 10. Every such guardian shall return to the probate court a statement of the property of his ward. If it is in-

vested as provided in the preceding section, and the investment is approved, he shall be accountable for it, and the income thereof, only as he is accountable for real estate of his ward.

Laws of 1907.

Chapter 15. Sec. 1. In addition to the authority now existing for investing trust funds in the hands of guardians and other trustees, such guardians and trustees are hereby authorized to invest said trust funds in such other stocks and bonds as are and may from time to time become legal investments for savings banks in this state, with the exception of stocks in banking corporations and trust companies, unless forbidden so to do by the instrument creating the trust.

Chapter 16. Sec. 1. Any guardian or trustee who now holds or shall hereafter hold any stock, bonds or other written evidence of debts which he shall have received from an administrator by order of the judge of probate, or from his ward or *cestui que trust*, or from any one in behalf of said ward or *cestui que trust*, as a part of the estate of said ward or *cestui que trust*, may with the approval of the judge of probate continue to hold the same and be accountable for the same and the income thereof, only as he is accountable for real estate of his ward or *cestui que trust*.

Sec. 2. Nothing herein contained shall relieve any guardian or trustee from liability on account of his want of due care and diligence in dealing with any property so held by him.

SAVINGS BANKS.

Since trustees may invest in securities which are legal for savings banks, it is necessary to add the statutes relating to such investments.

Chapter 114. Sec. 1. On and after the passage of this act, savings banks and savings departments of banking and trust companies shall make investment of their funds in the following classes of securities only:

1. In notes secured by first mortgage of real estate situ-

ated in New Hampshire; but not over seventy per cent of the value of the property covered shall be so loaned, and not exceeding seventy per cent of the deposits shall be so invested.

2. In notes secured by first mortgage of real estate situated outside of New Hampshire which is at the time improved, occupied, and productive; but not over fifty per cent of the value of the property covered shall be so loaned, and not exceeding twenty-five per cent of the deposits shall be so invested.

3. In notes secured by collateral in which the bank is at liberty to invest of a value at least ten per cent in excess of the face of the notes. The amount of any one class of securities so taken as collateral, added to that which the bank may own at the time, shall not exceed the total limit of that class of security; but not exceeding twenty-five per cent of the deposits shall be so invested.

4. In notes secured by collateral securities which are dealt in on the stock exchanges of Boston and New York, the stock exchange price of which shall at all times be at least twenty per cent in excess of the face of the note, while held by the bank; but not exceeding twenty-five per cent of the deposits shall be so invested.

5. In notes of individuals or corporations with two or more signers or one or more indorsers; but not exceeding five per cent of the deposits shall be loaned any one person or corporation in this class of security, and not exceeding twenty-five per cent of the deposits shall be so invested.

6. In the public funds of the United States, or those for which the faith of the United States is pledged to provide for the payment of the interest and principal.

7. In the bonds and notes of this state or of any county, city, town, precinct, or district of this state.

8. In the authorized bonds or notes of any state or territory of the United States; and in the bonds or notes of any city of the states of Maine, Vermont, Massachusetts, Rhode Island, Connecticut or New York, whose net indebtedness does not exceed five per cent of the last preceding valuation of the property therein for taxation, or of any county, town,

village, precinct, or district in said states whose net indebtedness does not exceed three per cent of such valuation.

9. In the authorized bonds of any county, city, town, school district, or other municipal corporation of any other of the United States or territories whose net indebtedness at the time of such investment does not exceed five per cent of the last preceding valuation of the property therein for taxation; and in the authorized bonds of any city of one hundred thousand inhabitants of any of said states whose net indebtedness does not exceed seven per cent of the last preceding valuation of the property therein for taxation. The term "net indebtedness" shall be construed to denote the indebtedness of any city, town, or other municipal corporation, omitting the debt created for supplying the inhabitants with water and deducting the amount of any sinking fund available for the payment of the municipal indebtedness. Provided, however, that such bonds shall not have been issued in aid of railroads or for special assessment purposes. Provided, also, that the bonds of any county, city, or town of less than ten thousand inhabitants, or of any school district or other municipal corporation of less than two thousand inhabitants, in any state or territory other than those named in paragraph eight of section one of this act, shall not be authorized investments. Provided further, that such bonds are issued by municipalities that are permitted by law to levy taxes sufficient to pay the interest and to provide sinking funds for their debt; otherwise such bonds shall not be authorized investments. But not exceeding fifty per cent of the deposits shall be so invested.

10. In the bonds or notes of any railroad company, except street railways, incorporated under the laws of this state, whose road is located wholly or in part in the same; but not exceeding twenty-five per cent of the deposits shall be so invested.

11. In the bonds of any railroad company, except street railways, incorporated under the authority of any of the New England states, whose road is located wholly or in part in the same, and which is in possession and operating its own

road, and has earned and paid regular dividends for the two years next preceding such investment; or in the bonds guaranteed or assumed by such railroad company; but not exceeding twenty-five per cent of the deposits shall be so invested.

12. In the bonds of any railroad company, except street railways, incorporated under the authority of any of the United States or territories, which is in possession of and operating its own road and has earned and paid regular dividends of not less than four per cent per annum on its capital stock for the three years next preceding such investment; provided, such capital stock on which it earns and pays dividends equals in amount one-third of the entire bonded indebtedness of said road; or in the bonds guaranteed or assumed by such railroad; but not exceeding twenty-five per cent of the deposits shall be so invested.

13. In the first mortgage bonds of corporations of this state, except street railways, located and doing business therein whose net indebtedness at the time of such investment does not exceed its capital stock actually paid in and remaining unimpaired; but not exceeding ten per cent of the deposits shall be so invested.

14. In the bonds of street railway corporations incorporated under the laws of this state and located wholly or in part in the same, and in the bonds of street railway corporations located wholly or in part in cities of thirty thousand inhabitants or more in any of the other New England states, and in the bonds of street railway corporations located wholly or in part in cities of fifty thousand inhabitants, or more, in any of the United States; provided, that the net indebtedness of any of such street railway corporations mentioned in this paragraph does not exceed the capital stock actually paid in and remaining unimpaired at the time of such investment, and that such corporation has earned and paid regular dividends of not less than four per cent per annum on its capital stock for five years next preceding such investment; but not exceeding ten per cent of the deposits shall be so invested.

15. In the bonds of telephone, telegraph, or express companies doing business in the United States or territories; provided, the total indebtedness of such company does not exceed its capital actually paid in and remaining unimpaired, and provided, such company has earned and paid regular dividends of at least four per cent per annum upon its capital stock of shares for five years previous to such investment; but not exceeding ten per cent of the deposits shall be so invested.

16. In the capital stock of any banking or trust company incorporated under the laws of this state and doing business therein, but the amount of such stock held by any savings bank as an investment and as collateral for loans shall not exceed one-tenth of the total capital stock of such banking or trust company, and not exceeding ten per cent of the deposits shall be so invested.

17. In the stock of any national bank or trust company located in the New England states or the state of New York, but not exceeding ten per cent of the deposits of a savings bank shall be invested in such stock; the amount of stock in any national bank or trust company in this state which may be held by any savings bank as an investment or as collateral security for loans shall not exceed twenty-five per cent of the capital stock of said national bank or trust company; and the amount of stock in any national bank or trust company outside of this state which may be held by any savings bank as an investment or as collateral for loans shall not exceed one-tenth of the capital stock of said national bank or trust company.

18. In the stock or notes of any railroad corporation, exclusive of street railways, located in any part of the United States or territories that has earned and paid regular dividends of not less than four per cent per annum on its capital stock for five years next preceding such investment; provided, such capital stock on which it pays dividends equals in amount one-third of the entire bonded indebtedness of said corporation; or in the stock of any other railroad corporation whose railroad and railroad property are leased to

such railroad upon an annual rental of not less than four per cent per annum upon the capital stock of the leased railroad; provided, said leased railroad shall have earned dividends of not less than three per cent upon its capital stock for a period of three years immediately preceding said lease; but not exceeding twenty-five per cent of the deposits shall be so invested.

19. In the stock or notes of any manufacturing company in the New England states that has paid regular dividends on its capital stock for five years previous to such investment, and whose net indebtedness does not exceed the amount of its capital stock fully paid in; but not exceeding ten per cent of the deposits shall be so invested.

20. In the stock or notes of any parlor car or sleeping car company incorporated and doing business in the United States, and whose cars are in actual use upon any railroad whose stock is a legal investment for New Hampshire savings banks, and that has earned and paid regular dividends of not less than four per cent per annum on its capital stock for five years next preceding such investment; but not exceeding five per cent of the deposits shall be so invested.

21. In land and building suitable and actually used by it in part for its banking room, the total cost of which shall not exceed ten per cent of its deposits.

22. In the stock of any real estate trust company of this state and whose property is occupied and improved and is located in this state, whose capital stock is one hundred thousand dollars or more, provided the total indebtedness of such company does not exceed one-half of the capital stock actually paid in and remaining unimpaired, and provided such company has earned and paid regular dividends of at least four per cent per annum upon its capital stock or shares for five years previous to such investment; but not exceeding five per cent of the deposits shall be so invested.

Loan and Investment Book Must be Kept.—There shall be kept by every savings bank, state bank and trust company in this state, in a separate book especially provided for that purpose, a record of all loans and investments of every de-

scription made by said institution, substantially in the order of the time when such loans or investments are made, which shall show that such loans or investments have been made with the approval of the investment committee of such institution, and which shall indicate such particulars respecting such loans or investments as the bank commissioners shall direct. This book shall be submitted to the trustees and to the bank commissioners at each examination required by law. Such loans or investments shall be classified in this book in such a manner as the bank commissioners shall direct.

Guardians.—Prior to 1866, there was no statute specifying the nature of investments for guardians. An act passed in that year provided for investments in notes secured by mortgage of real estate at least double the value of the notes, or in some incorporated savings bank in the state, or in the bonds of the United States, of this state, or some town, or county within the state, and in no other way whatever. It was made lawful for a guardian to receive bonds, stocks, or other evidence of debt, wherever invested, from any administrator, and to hold the same with the approval of the probate court. These provisions now exist in General Laws, Chapter 185, Sections 10 and 11, and in Public Statutes, Chapter 178, Sections 8 and 9.

Must Invest.

A good reason must be shown for failure to invest, but small sums for expenses may be retained. *Knowlton v. Bradley*, 17 N. H. 458.

Mingling Funds with His Own.

A trustee who mingles funds with his own is chargeable with interest at five per cent. *Gordon v. West*, 8 N. H. 455; *Knowlton v. Bradley*, 17 N. H. 458; *Stark v. Gamble*, 43 N. H. 465.

Personal Security.

Prior to the statutes of 1866, it seems that the rule which prohibits trustees from investing in personal securities was not strictly enforced, although it was said that for any but small sums, the funds should be deposited in savings banks or invested in mortgages or upon a note with a surety. *Knowlton v. Bradley*, 17 N. H. 458.

Corporate Stock.

A trustee may not invest in corporate stock unless he is expressly authorized to do so in the trust instrument. This rule is not changed by words in the instrument giving the trustee discretion in the selection of investments, "according to his best skill and judgment." *Kimball v. Reding*, 31 N. H. 352. But the statute now provides for investments in stocks of corporations, excepting banks and trust companies, which fulfill certain specified conditions.

Even if he has power to invest in stocks, they must appear to have been productive at the time of investment. *Kimball v. Reding*, 31 N. H. 352.

It seems that where a guardian receives stocks as a part of his ward's estate, he may hold and account for them. *French v. Currier*, 47 N. H. 88; *Stevens v. Meserve*, 73 N. H. 293.

Continuing Business of Testator.

Unless specifically authorized so to do, trustees have no power to continue the business of a testator. *Raynes v. Raynes*, 54 N. H. 201.

Executors and Trustees Generally.

Executors and trustees are under the same duties and obligations in making investments as guardians. They are therefore subject to the provisions of section 9, chapter 178, of the Public Statutes. *Bell v. Sawyer*, 59 N. H. 393.

Mortgages in Other States.

It seems that no objection has been raised by the New Hampshire courts to investments in mortgages on property located in other states, provided it is of the required value. *Stevens v. Meserve*, 73 N. H. 293.

Value.

The exercise of reasonable care and diligence in determining value of an investment relieves the trustee from liability for subsequent depreciation. And when he settles a desperate claim by taking security which he knows is less than the required value, but which he takes to save something for the estate, he will be protected. *Stevens v. Meserve*, 73 N. H. 293.

Deposit in Savings Department by Trust Company.

Deposit of trust funds by a trust company in its savings department is legal. *Tucker v. New Hampshire Trust Co.*, 69 N. H. 187.

NEW JERSEY.

TRUSTEES GENERALLY.

Statutes of 1910.

(With Amendments to 1914.)

Sec. 34. Investment by Testator, Continuance by Executor, Trustee or Administrator with Will Annexed.—Sec. 1. Whenever any testator shall have made, in his lifetime, any investment of money in municipal bonds or on bond secured by mortgage, or in the bonds or stock shares of any corporation, and the same bonds, mortgages or stock shares shall have come into the hands of the executor of or trustee under the will of such testator or of the administrator with the will annexed, to be administered, and such executor, administrator or trustee may, in the exercise of good faith and reasonable discretion, have continued such investment, or may hereafter continue the same, he shall not be accountable for any loss by reason of such continuance.

Sec. 35. Investments by Executor, Administrator, Guardian or Trustee, Securities Specified.—Sec. 2. Any executor, administrator, guardian or trustee, whose duty it may be to loan the money intrusted to him, may invest the same in any of the following securities:

- (1) Bonds issued by the United States of America;
- (2) Bonds issued by this state;
- (3) Bonds of any county, city, town or township of this state, issued pursuant to the authority of any law of this state where the total indebtedness of said county, city, town or township does not exceed in the aggregate fifteen per centum of the assessable valuation of taxable property within such county, city, town or township;
- (4) Bonds secured by mortgage which shall be a first lien upon real estate estimated to be worth at least twice the

amount loaned at a rate of interest not less than three per centum, nor greater than six per centum per annum.

Sec. 36. Act Not to Apply Where Deed, Will, or Court Directs Manner of Investment.—Sec. 3. This act shall not apply where the deed of trust, or the last will and testament of any testator, or any court having jurisdiction of the matter specially directs in what manner the trust fund shall be invested.

Sec. 37. Investments by Executors, Administrators, Guardians or Trustees, Additional Securities.—Sec. 1. Any executor, administrator, guardian or trustee whose duty it may be to loan money intrusted to him, in addition to the securities in which he may invest the same under the provisions of the act to which this is a supplement, may invest the same in any loans or securities in which savings banks of this state may invest their funds by the provisions of any general law of this state.

Orphans' Courts—Order of Court.—In addition to the above authorized investments, there are statutory provisions relating to investments under the supervision of Orphans' Courts. Section 136 provides that executors, administrators, guardians and trustees may invest under the direction of the Orphans' Court and Section 137 enumerates the securities in which such trustees may invest without an order of court. Although the statutes are not in complete harmony, they are sufficiently definite to furnish a guide to trustees. Section 137, relating to Orphans' Courts, is as follows:

Sec. 137. Investments.—Any executor, administrator, guardian or trustee whose duty it may be to loan or invest money intrusted to him as such, may, without any special order of any court, invest the same or any part thereof in any of the following securities:

United States Bonds.—In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof.

State Bonds.—In bonds of any state in the Union which has not within ten years previous to the making of such in-

vestment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the legislature of such state.

Municipal or School Bonds.—In the bonds or interest-bearing notes or obligations of any county, city, town, township, borough, village or public school district of this state, or of the City of New York or of the City of Philadelphia; provided, the indebtedness of the county, city, town, township, borough or village does not exceed in the aggregate fifteen per centum of the assessable valuation of all taxable property within such county, city, town, township, borough or village, exclusive of obligations issued for public school purposes.

Railroad Bonds.—In first mortgage bonds of any railroad company which has paid dividends of not less than four per centum per annum regularly, on its entire capital stock, for a period of not less than five years next previous to the purchase of such bonds, or in any consolidated mortgage bonds of any such company authorized to be issued to retire the entire bonded debt of such company.

Mortgages on Real Estate.—In bonds secured by first mortgage upon real estate; provided, the amount loaned upon any such bond and mortgage shall not at the time of making such loan exceed sixty per centum of the estimated worth of the real estate covered by such mortgage; provided, also, that the rate of interest upon any of the above enumerated securities in which such investments may be made shall not be less than three per centum nor more than six per centum per annum; this act shall not apply where the deed of trust, or the last will and testament of any testator, or any court having jurisdiction of the matter specially directs in what securities the trust funds shall be invested, and every such court is hereby given power to specially direct by order or orders, from time to time, additional securities in its discretion in which trust funds may be invested and any investment thereof made in accordance with any such special direction shall be legal, and no executor, administrator, guardian

or trustee shall be held liable for any loss resulting in any such case.

SAVINGS BANKS.

Savings Banks.—Since trustees are authorized to invest in securities which are legal for savings banks, it is necessary to set forth the portions of Section 33, of the Savings Bank Law, which relate to legal investments.

Sec. 33. No savings bank shall invest the moneys deposited with the same in any manner except as follows, to wit:

United States Securities.—1. In stocks or bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof;

State Bonds.—2. In the interest-bearing notes of this state; or in any bonds authorized by the laws of this state to be issued by any commission appointed by the Supreme Court of this state, by virtue of any law of this state;

Bonds of Foreign States.—3. In the bonds of any state in the Union that has not, within ten years previous to making such investment by any such bank, defaulted in the payment of any part of either principal or interest in any debt authorized by any law of such state to be contracted;

Municipal Bonds.—4. In the bonds of any county, township, municipality or school district of this state issued pursuant to the authority of any law of this state: provided, such county, township, municipality or school district shall not, within the five years next preceeding, have defaulted in the payment of any part of either principal or interest of any legal debt or obligation thereof; and provided further, the total indebtedness of any borough or village does not exceed ten per centum of its assessed valuation, and such school district bonds are by law charged upon all the property of the inhabitants of such district; or in any interest-bearing obligation issued by any city, town, township, borough or village in such county.

City or County Bonds of Other States.—5. In the bonds

of any city or county of any other state of the Union issued pursuant to the authority of any law of any such state; provided, no such city or county has, within ten years previous to making such investment, defaulted in the payment of any part of either principal or interest of any debt authorized by law of such state to be contracted; and provided further, the total indebtedness of any such city or county is limited by law to ten per centum of its assessed valuation.

Railroad Bonds.—6. In first mortgage bonds issued, guaranteed, or assumed by any railroad company, which has paid dividends of not less than four per centum per annum regularly, on its entire capital stock, for a period of not less than five years next previous to the purchase of such bonds, or in any consolidated mortgage bonds issued, guaranteed, or assumed by any such company, authorized to be issued to retire the entire bonded debt of such company; or in the bonds of any railway terminal or dock company of this state, secured by first mortgage on terminal or dock property fronting on the Hudson River and having an assessed value for the purpose of taxation in excess of the amount of the entire issue of bonds, and used and occupied as a dock or terminal by any railroad company now operating in this state;

Bond and Mortgage.—7. In bonds secured by mortgages which shall be a first lien on real estate situate in this state, and worth at least double the amount loaned thereon, but not to exceed eighty per cent of the whole deposits shall be so loaned or invested; but in case the loan is on unimproved or unproductive real estate, the amount loaned thereon shall not be more than thirty per centum of its actual value; and no investment in any bond and mortgage shall be made by any savings bank, except upon the report of a committee of at least three of the managers, and two members of which committee shall certify in writing to the value of the premises mortgaged, or to be mortgaged, according to their best judgment; such report shall be filed and preserved among the records of the bank.

Real Estate.—8. In real estate strictly in accordance with the following provisions:

Bank Building.—(a) A plot whereon is erected, or may be erected, a building or buildings requisite for the convenient transaction of its business, and from portions of which not required for its own use, a revenue may be derived; the costs of such building or buildings and lot shall in no case exceed fifty per cent of the net surplus of such bank, except with the written approval of the commissioner of banking and insurance; provided, the limitations as to the cost of such lot and building contained in this subdivision shall not apply to or affect any such investment heretofore made by a savings bank organized under a special charter;

Property Acquired by Foreclosure, etc.—(b) Such as shall have been purchased or acquired by it at sales upon the foreclosure of mortgages owned by such corporation, or upon judgments or decrees obtained or rendered for debts due to it, or in settlements effected to secure such debts or in satisfaction of such mortgages; and all such real estate shall be sold by such bank within five years after the same shall have been so purchased, unless, upon application by such corporation to the commissioner of banking and insurance, he shall extend the time within which such sale shall be made; the provisions of this section shall apply to all funds of any savings bank, including its reserve fund, and all investments of money and sales and transfers of securities may be made in the manner provided and made lawful in this act, notwithstanding any provision in any special charter contained limiting the number of trustees or managers who shall act in the investment of moneys and the sale or transfer of stocks or securities.

34. Loans on Collateral Security.—No savings bank shall loan the money on deposit with the same, or any part thereof, upon notes, bills of exchange or drafts, except upon the additional pledge of collateral security, which shall be of the same nature and character as those in which the money deposited may be invested as directed in the preceding section, or the capital stocks of national and state banks, or the capital stock or bonds of other corporations of this state, which have not defaulted in the payment of interest or dividends, upon the

collateral loaned upon, within two years next preceding the time of such loan, and then only to the extent of eighty per centum of the market value of such collaterals; provided, the total amount of such loans shall not exceed fifteen per centum of the total deposits held by such savings bank.

35. Penalty.—A violation of any of the provisions of the two preceding sections by any of the managers or other officers of any savings bank shall be a misdemeanor, and upon conviction thereof any person so offending shall be punished by a fine of not less than two hundred and fifty dollars nor more than one thousand dollars, or imprisonment for a term not exceeding two years at the discretion of the court.

Trust Companies—Mingling Funds—Loans to Officers.—The trust company law of New Jersey provides that “no money, property or securities received or held by any trust company in its capacity of assignee, receiver, executor, administrator, guardian or trustee shall be mingled with the investments of the capital stock or other moneys or property belonging to or deposited with such corporation.” The law also provides that no trust company shall make any loan to its president, vice-president, treasurer, secretary, cashier, or to any of its directors, or any of its clerks, tellers, book-keepers, agents, servants or other persons in its employ until the proposition to make such loan, stating the amount, terms and security, if any, offered therefor, shall have been submitted in writing by the person desiring the same to a meeting of the board of directors of such company, or of the executive committee of such board, if any, and accepted and approved by the vote of a majority of those present constituting a quorum.

Section 18 of the Trust Company Law provides that no trust company shall make any loan on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall within one year from the time of its purchase be sold or disposed of at public or private sale; provided, that nothing in this sec-

tion contained shall apply to any loan made before the passage of this act.

Personal Securities.

It is well settled that trustees render themselves liable for loss if they loan funds on mere personal security. *Brewster v. Demarest*, 48 N. J. Eq. 559; *Sherman v. Lanier*, 39 N. J. Eq. 249; *Gray v. Fox*, 1 N. J. Eq. 259; *Vreeland v. Vreeland's Adm'r.*, 16 N. J. Eq. 512, 530.

Stock of Private Companies.

Investment in the stock of private corporations is not considered safe. *Gray v. Fox*, 1 N. J. Eq. 259.

When the direction is to invest in "bonds and mortgages, or in productive stocks," the trustee must invest in bonds and mortgages, and if these cannot be obtained, in stocks or bonds of this state or the United States or in railroad bonds authorized by statute.

May Not Purchase Property.

Trust money may not be invested in the purchase of real estate. *Quicks Exr's. v. Fisher*, 9 N. J. Eq. 802.

Trustee May Not Purchase His Own Property as an Investment.

A trustee, although authorized by the will to purchase real estate as an investment, may not sell his own property to the estate. *Holcomb v. Holcomb's Ex'rs.*, 11 N. J. Eq. 281.

If the discretion given by the will or deed, as to investments, is in general words, such as "good security," "stocks," "productive stocks," "public stocks" or "at discretion," without stating any particular security or stock, trustees are permitted to exercise their discretion only as to the kind of legal security which they will select. It does not leave them free to invest as they choose. *Ward v. Kitchen*, 30 N. J. Eq. 31; *Ashhurst v. Potter*, 29 N. J. Eq. 625.

Even a clause that the trustee is not to be liable or responsible for any cause except his own willful and intentional breach of trust will not exonerate him. *Gilmore v. Tuttle*, 32 N. J. Eq. 611.

Mortgage or Government Securities.

It is the duty of trustees to invest upon bond and mortgage or in the securities of this state or of the United States, and the fund must be invested, if on mortgages, at the highest rates allowed by law, if such investment can be procured, and, if possible, in such a way as not to be subject to taxes. *Lathrop v. Smalley's Ex'rs.*, 23 N. J. Eq. 192. But the statutes now permit investments in certain railroad bonds.

Business, Trade or Speculation.

When a trustee has invested funds in trade, business or speculation, he must account for the profits or pay compound interest at the highest rate, at the option of the beneficiary. *McKnight's Ex'rs. v. Walsh*, 23 N. J. Eq. 136; *affd.*, 24 N. J. Eq. 498.

Duty to Invest.

It is the duty of a trustee to invest the trust funds in legal securities, but when he simply neglects to withdraw funds from a business in which they had been invested by the testator, it seems that he cannot be made to account for the profits of the business. *McKnight's Ex'rs. v. Walsh*, 23 N. J. Eq. 136; *affd.*, 24 N. J. Eq. 498.

He must invest the interest which he receives and which is not used. *Voorhees v. Stoothoff*, 11 N. J. L. 145.

Continuing Investments Made by Creator of Trust.

It is the duty of a trustee, within a reasonable time, to call in the estate and convert the unauthorized securities into legal investments. *Babbitt v. Fidelity Trust Co.*, 72 N. J. Eq. 745.

Retaining Improper Investments amounts to the same thing as making them. *Ashhurst v. Potter*, 29 N. J. Eq. 625.

But where the trust instrument makes a specific bequest of stocks, the income to be disposed of in a certain manner, it is the duty of the trustee to retain such stocks unless a threatened depreciation should render it prudent for him to sell. *Ward v. Kitchen*, 30 N. J. Eq. 31. But the statutes now permit a trustee to continue investments which have been made by the creator of the trust.

Trustee May Not Have Individual Interest in Dealings.

The rule that a trustee may not make any personal profit or obtain any advantages to himself from the trust estate either directly or indirectly by using the trust money or by purchasing the property in his own name, is well settled by numerous decisions. He may be charged with the amount used and interest or be held accountable for the profits. From the early case of *Voorhees v. Stoothoff*, 11 N. J. L. 145, to the recent decision in *Hill v. Hill*, 79 N. J. Eq. 521, this rule has been rigidly enforced.

When a trustee has violated the trust by using the funds in his own business, he is not entitled to commissions, and must account for the profits or pay compound interest at the highest rates, at the option of the beneficiary. *McKnight's Ex'rs. v. Walsh*, 23 N. J. Eq. 136; *affd.*, 24 N. J. Eq. 498.

Improvements.

Under order of court a part of the trust fund may be used in erecting buildings on the land. *Matthews v. Dellicker*, 39 N. J. Eq. 90.

Six Months Allowed to Make Investments.

After the manner of the Civil law, it seems that six months should be allowed for receipt and investment of funds. *Voorhees v. Stoothoff*, 11 N. J. L. 145.

Second Mortgages.

Second mortgages are not proper security, and the fact that they were taken merely as temporary investment and by advice of counsel does not protect the trustee from liability for loss. *Gilmore v. Tuttle*, 32 N. J. Eq. 611; *Mulford v. Mulford*, 53 Atl. Rep. 79; *Monroe v. Osborne*, 10 Atl. Rep. 267.

Must Invest in New Jersey.

Ordinarily the court will not approve an investment of the funds outside of the state. *McCullough v. McCullough*, 44 N. J. Eq. 313.

Even when the trustees resided in another state and the mortgages which the testator had held were on property in that state, the court decided that as these mortgages were paid off the trustees should reinvest in New Jersey.

Administrator Pending Litigation.

An administrator *pendente lite* should not suffer trust funds to lie idle without sanction of the orphans' court, neither should he mingle the funds with his own or use them for his own benefit. If he sells railroad stock and uses the money, he will be charged with the amount he received and for the difference between that price and the price which a prudent trustee would have received, together with interest upon the amount received by him. *Fluck v. Lake*, 54 N. J. Eq. 638.

Acquiescence of Creator of Trust.

Where a trustee invests funds in the purchase of a farm with the acquiescence of the creator of the trust, he is not personally liable. *James v. Aller*, 66 N. J. Eq. 69.

Creation of Trust.

Although the creation of a trust is usually by will or deed or order of court, it may arise where one has placed confidence in another for a long time, and has allowed him complete control of affairs. In such a case, the strict rules applicable to investment of funds apply. *Wieters v. Hart*, 67 N. J. Eq. 507.

Municipal Bonds and Bank Stock.

An executor has no authority to invest any part of the estate in municipal bonds or bank stock. *Tucker v. Tucker*, 33 N. J. Eq. 235. But the right to invest in municipal bonds is now given by Statute.

Protected by Order of Court.

Trustees may obtain the direction of the orphans' court as to investments and thus protect themselves. *Tucker v. Tucker*, 33 N. J. Eq. 235.

Interest.

When an executor receives the funds in various sums from time to time and settles his accounts promptly, and could not well make permanent investments, he is not chargeable with interest. *Wyckoff v. O'Neil*, 71 N. J. Eq. 729.

Investing Cash Dividends in Stock.

When trustees are given power in the will to continue investments, and part of the estate consists of stock, they are entitled to use a two hundred per cent cash dividend to purchase two new shares for each share they own, thus preserving the proportionate interest of the estate in the property. *Ballantine v. Young*, 79 N. J. Eq. 70.

Carrying on Business.

When a testator directs his business to be carried on by the trustee, *prima facie*, only the fund employed in the business is liable for the debts of subsequent creditors. If the estate is to be liable generally, the intention must clearly appear in the will. *Laible v. Ferry*, 32 N. J. Eq. 791.

NEW MEXICO.

Statutes of 1897.

(With Amendments to 1914.)

Sec. 1453. Guardians.—If, at any time, any guardian shall have on hand any money belonging to his ward beyond what may be necessary for his education and maintenance, such guardian shall, under the direction of the court, loan the same to such persons as will give good security therefor, and such money shall be loaned on such time as the court shall direct.

Sec. 1454. If any guardian fail to loan the money of his ward on hand as aforesaid, under the provisions of this act, he shall be accountable for the interest thereon.

Trust Companies.—By the laws of 1903, Ch. 52, Section 8, trust companies are prohibited from making loans on their own capital stock as security. But there are no specific provisions regarding investment of trust funds.

General Principles Applicable.

The Statutes and decisions in New Mexico being few, a trustee should observe the general principles discussed in Part I.

Deposit in Bank to Personal Credit.

A trustee who deposits trust funds in bank to his own credit is liable, especially when it is evident that he intended to use the money. *Perea v. Harrison*, 7 New Mex. 666.

Good Faith Required.

The law requires the utmost good faith and diligence of trustees. They will not be permitted to derive any personal advantage from the trust. *Perea v. Borela*, 5 New Mex. 458.

NEW YORK.*

TRUSTEES GENERALLY.

Personal Property Law, Section 21.

A trustee or other person holding trust funds for investment may invest the same in the same kind of securities as those in which savings banks of this State are by law authorized to invest the money deposited therein, and the income derived therefrom, and in bonds and mortgages on unencumbered real property in this State worth fifty per centum more than the amount loaned thereon. A trustee or other person holding trust funds may require such personal bonds or guaranties of payment to accompany investments as may seem prudent, and all premiums paid on such guaranties may be charged to or paid out of income, providing that such charge or payment be not more than at the rate of one-half of one per centum per annum on the par value of such investments. But no trustee shall purchase securities hereunder from himself.

TRUST COMPANIES.

Banking Law of 1914.

Investment of Trust Funds.—All investments of money received by any such corporation, and by any trust company chartered by special act, prior to May 18, 1892, as executor, administrator, guardian, personal or testamentary trustee, receiver, committee or depositary, shall be at its sole risk, and for all losses of such money the capital stock, property and effects of the corporation shall be absolutely liable, unless the investments are such as are proper when made by an individual acting as trustee, executor, administrator, guardian, receiver, committee, depositary, or such as are permitted in and by the instrument or words creating or defining the trust.

* For list of legal investments in New York see Part III.

Interest.—On all sums of money not less than one hundred dollars, which shall be collected and received by a trust company acting as executor, administrator, guardian, trustee, receiver or committee under the appointment of any court or officer, or in any fiduciary capacity under such appointment, or as a depository of moneys paid into court, interest shall be allowed by such trust company at not less than the rate of two per centum per annum until the moneys so received shall be duly expended or distributed. If such interest moneys, or any part thereof, shall not annually be expended or distributed pursuant to the terms or provisions of the trust under which such moneys are held, the amount thereof not so expended or distributed shall be accumulated by such trust company for the benefit of the parties interested in such trust fund, and shall be added to the principal to constitute a new principal upon which interest shall thereafter be computed.

SAVINGS BANKS.

Since all trustees may invest in securities which are legal for savings banks, it is necessary to set forth the provisions of the new banking law relating to investments by such banks.

Investments of deposits and guaranty fund and restrictions thereon.

A savings bank may invest the moneys deposited therein, the sums credited to the guaranty fund thereof and the income derived therefrom, in the following property and securities and no others; and subject to the following restrictions:

1. The stocks or bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is pledged to provide for the payment of the interest and principal, including the bonds of the District of Columbia.

2. The stocks or bonds or interest-bearing obligations of this state, issued pursuant to the authority of any law of the state.

3. The stocks, bonds or interest-bearing obligations of

any state of the United States, upon which there is no default and upon which there has been no default for more than ninety days; provided that within ten years immediately preceding the investment such state has not been in default for more than ninety days in the payment of any part of principal or interest of any debt duly authorized by the legislature of such state to be contracted by such state since the first day of January, eighteen hundred and seventy-eight.

4. The stocks, bonds, interest-bearing obligations, or revenue notes sold at a discount, of any city, county, town, village, school district, union free school district or poor district in this state, provided that they were issued pursuant to law and that the faith and credit of the municipality or district that issued them are pledged for their payment.

5. The stocks or bonds of any incorporated city situated in one of the states of the United States which was admitted to statehood prior to January first, eighteen hundred and ninety-six, and which since January first, eighteen hundred and sixty-one, has not repudiated or defaulted in the payment of any part of the principal or interest of any debt authorized by the legislature of any such state to be contracted, provided said city has a population, as shown by the federal census next preceding said investment, of not less than forty-five thousand inhabitants, and was incorporated as a city at least twenty-five years prior to the making of said investment, and has not, since January first, eighteen hundred seventy-eight, defaulted for more than ninety days in the payment of any part either of principal or interest of any bond, note or other evidence of indebtedness, or effected any compromise of any kind with the holders thereof. But if, after such default on the part of any such state or city, the debt or security, in the payment of the principal or interest of which such default occurred, has been fully paid, refunded or compromised, by the issue of new securities, then the date of the first failure to pay principal or interest, when due, upon such debt or security, shall be taken to be the date of such default, within the provisions of this subdivision, and subsequent failures to pay installments of principal or in-

terest, upon such debt or security, prior to the refunding or final payment of the same, shall not be held to continue said default or to fix the time thereof, within the meaning of this subdivision, at a date later than the date of said first failure in payment. If at any time the indebtedness of any such city, together with the indebtedness of any district, or other municipal corporation or subdivision except a county, which is wholly or in part included within the bounds or limits of said city, less its water debt and sinking fund, shall exceed seven per centum of the valuation of said city for purposes of taxation, its bonds and stocks shall thereafter, and until such indebtedness shall be reduced to seven per centum of the valuation for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks.

6. Bonds and mortgages on unincumbered real property situated in this state, to the extent of sixty per centum of the appraised value thereof. Not more than sixty-five per centum of the whole amount of deposits and guaranty fund shall be so loaned or invested. If the loan is on unimproved and unproductive real property, the amount loaned thereon shall not be more than forty per centum of its appraised value. No investment in any bonds and mortgages shall be made by any savings bank except upon the report of a committee of its trustees charged with the duty of investigating the same, who shall certify to the value of the premises mortgaged or to be mortgaged, according to their judgment, and such report shall be filed and preserved among the records of the corporation.

7. The following bonds of railroad corporations:

(a) The first mortgage bonds of any railroad corporation of this state, the principal part of whose railroad is located within this state, or of any railroad corporation of this or any other state or states connecting with and controlled and operated as a part of the system of any such railroad corporation of this state, and of which connecting railroad at least a majority of its capital stock is owned by such a railroad corporation of this state or in the mortgage bonds of any such railroad corporation of an issue to retire all prior mortgage debt of such railroad companies respec-

tively; provided that at no time within five years next preceding the date of any such investment, such railroad corporation of this state or such connecting railroad corporation respectively shall have failed regularly and punctually to pay the matured principal and interest of all its mortgage indebtedness, and in addition thereto regularly and punctually to have paid in dividends to its stockholders during each of said five years an amount at least equal to four per centum upon all its outstanding capital stock; and provided, further, that at the date of every such dividend the outstanding capital stock of such railroad corporation or such connecting railroad company respectively shall have been equal to at least one-third of the total mortgage indebtedness of such railroad corporations respectively, including all bonds issued or to be issued under any mortgage securing any bonds in which such investment shall be made.

(b) The mortgage bonds of the following railroad corporations: The Chicago & Northwestern railroad company; Chicago, Burlington and Quincy railroad company, Michigan Central railroad company, Illinois Central railroad company, Pennsylvania railroad company, Delaware and Hudson company, Delaware, Lackawanna and Western railroad company, New York, New Haven and Hartford railroad company, Boston and Maine railroad company, Maine Central railroad company, the Chicago and Alton railroad company, Morris and Essex railroad company, Central railroad of New Jersey, United New Jersey railroad and canal company, also in the mortgage bonds of railroad companies whose lines are leased or operated or controlled by any railroad company specified in this paragraph if said bonds be guaranteed both as to principal and interest by the railroad company to which said lines are leased or by which they are operated or controlled. Provided that at the time of making investments authorized by this paragraph the said railroad corporations issuing such bonds shall have earned and paid regular dividends of not less than four per centum per annum in cash on all their issues of capital stock for the ten years next preceding such investment, and provided the capital stock of any said rail-

road corporations shall equal or exceed in amount one-third of the par value of all its bonded indebtedness; and further provided that all bonds authorized for investment by this paragraph shall be secured by a mortgage which is a first mortgage on either the whole or some part of the railroad and railroad property of the company issuing such bonds, or that such bonds shall be mortgage bonds of an issue to retire all prior mortgage debts of such railroad company; provided, further, that the mortgage which secures the bonds authorized by this paragraph is dated, executed and recorded prior to January first, nineteen hundred and five.

(c) The mortgage bonds of the Chicago, Milwaukee and Saint Paul railway company, and the Chicago, Rock Island and Pacific railway company, so long as they shall continue to earn and pay at least four per centum dividends per annum on their outstanding capital stock, and provided their capital stock shall equal or exceed in amount one-third of the par value of all their bonded indebtedness, and further provided that all bonds of either of said companies hereby authorized for investment shall be secured by a mortgage which is a first mortgage on either the whole or some part of the railroad or railroad property actually in the possession of and operated by said company, or that such bonds shall be mortgage bonds of an issue to retire all prior debts of said railroad company; provided, further, that the mortgage which secures the bonds authorized by this paragraph is dated, executed and recorded prior to January first, nineteen hundred and five.

(d) The first mortgage bonds of the Fonda, Johnstown and Gloversville railroad company, or in the mortgage bonds of said railroad company of an issue to retire all prior mortgage debts of said railroad company, and provided the capital stock of said railroad company shall equal or exceed in amount one-third of the par value of all its bonded indebtedness, and provided also that such railroad be the standard gauge of four feet eight and one-half inches, and in the mortgage bonds of the Buffalo Creek railroad company of an issue to retire all prior mortgage debts of said railroad company, provided that the bonds authorized by this paragraph are se-

cured by a mortgage dated, executed and recorded prior to January first, nineteen hundred and five.

(e) The mortgage bonds of any railroad corporation incorporated under the laws of any of the United States, which actually owns in fee not less than five hundred miles of standard gauge railway exclusive of siding, within the United States, provided that at no time within five years next preceding the date of any such investment such railroad corporation shall have failed regularly and punctually to pay the matured principal and interest of all its mortgage indebtedness and in addition thereto regularly and punctually to have paid in dividends to its stockholders during each of said five years an amount at least equal to four per centum upon all its outstanding capital stock; and provided further that during said five years the gross earnings in each year from the operations of said company, including therein the gross earnings of all railroads leased and operated or controlled and operated by said company, and also including in said earnings the amount received directly or indirectly by said company from the sale of coal from mines owned or controlled by it, shall not have been less in amount than five times the amount necessary to pay the interest payable during that year upon its entire outstanding indebtedness, and the rentals for said year of all leased lines, and further provided that all bonds authorized for investment by this paragraph shall be secured by a mortgage which is at the time of making said investment or was at the date of the execution of said mortgage (1) a first mortgage upon not less than seventy-five per centum of the railway owned in fee by the company issuing said bonds exclusive of sidings at the date of said mortgage or (2) a refunding mortgage issued to retire all prior lien mortgage debts of said company outstanding at the time of said investment and covering at least seventy-five per centum of the railway owned in fee by said company at the date of said mortgage. But no one of the bonds so secured shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds which together with all outstanding prior debts of said

company, after deducting therefrom in case of a refunding mortgage, the bonds reserved under the provisions of said mortgage to retire prior debts at maturity, shall exceed three times the outstanding capital stock of said company at the time of making said investment. And no mortgage is to be regarded as a refunding mortgage, under the provisions of this paragraph, unless the bonds which it secures mature at a later date than any bond which it is given to refund, nor unless it covers a mileage at least twenty-five per centum greater than is covered by any one of the prior mortgages so to be refunded.

(f) Any railway mortgage bonds which would be a legal investment under the provisions of paragraph (e) of this subdivision, except for the fact that the railroad corporation issuing said bonds actually owns in fee less than five hundred miles of road, provided that during five years next preceding the date of any such investment the gross earnings in each year from the operations of said corporation, including the gross earnings of all lines leased and operated or controlled and operated by it, shall not have been less than ten million dollars.

(g) The mortgage bonds of a railroad corporation described in the foregoing paragraph (e) or (f) or the mortgage bond of a railroad owned by such corporation, assumed or guaranteed by it by endorsement on said bonds, provided said bonds are prior to and are to be refunded by a general mortgage of said corporation the bonds secured by which are made a legal investment under the provisions of said paragraph (e) or (f); and provided, further, that said general mortgage covers all the real property upon which the mortgage securing said underlying bonds is a lien.

(h) Any railway mortgage bonds which would be a legal investment under the provisions of paragraph (e) or (g) of this subdivision except for the fact that the railroad corporation issuing said bonds actually owns in fee less than five hundred miles of road, provided the payment of principal and interest of said bonds is guaranteed by endorsement thereon by, or provided said bonds have been assumed by a

corporation whose first mortgage is, or refunding mortgage bonds are, a legal investment under the provisions of paragraph (e) or (f) of this subdivision. But no one of the bonds so guaranteed or assumed shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds which, together with all the outstanding prior debts of the corporation making said guarantee or so assuming said bonds, including therein the authorized amount of all previously guaranteed or assumed bond issues, shall exceed three times the capital stock of said corporation, at the time of making said investment.

(i) The first mortgage bonds of a railroad the entire capital stock of which, except shares necessary to qualify directors, is owned by, and which is operated by a railroad whose last issued refunding bonds are a legal investment under the provisions of paragraph (a), (e), or (f) of this subdivision, provided the payment of principal and interest of said bonds is guaranteed by endorsement thereon by the company so owning and operating said road, and further provided the mortgage securing said bonds does not authorize an issue of more than twenty thousand dollars in bonds for each mile of road covered thereby. But no one of the bonds so guaranteed shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds which together with all the outstanding prior debts of the company making said guarantee, including therein the authorized amount of all previously guaranteed bond issues, shall exceed three times the capital stock of said company, at the time of making said investment.

Bonds which have been or shall become legal investments for savings banks under any of the provisions of this section shall not be rendered illegal as investments, though the property upon which they are secured has been or shall be conveyed to another corporation, and though the railroad corporation which issued or assumed said bond has been or shall be consolidated with another railroad corporation, if the consolidated or purchasing corporation shall assume the payment of said bonds and shall continue to pay regularly

interest or dividend or both upon the securities issued against, in exchange for or to acquire the stock of the company consolidated or the property purchased or upon securities subsequently issued in exchange or substitution therefor to an amount at least equal to four per centum per annum upon the capital stock outstanding at the time of such consolidation or purchase of said corporation which has issued or assumed such bonds.

Not more than twenty-five per centum of the assets of any savings bank shall be loaned or invested in railroad bonds, and not more than ten per centum of the assets of any savings bank shall be invested in the bonds of any one railroad corporation described in paragraph (a) of this subdivision, and not more than five per centum of such assets in the bonds of any other railroad corporation. In determining the amount of the assets of any savings bank under the provisions of this subdivision its securities shall be estimated in the manner prescribed for determining the per centum of par value surplus by section [257] of this article.

Street railroad corporations shall not be considered railroad corporations within the meaning of this subdivision.

8. Promissory notes payable to the order of the savings bank upon demand, secured by the pledge and assignment, if necessary, of the stocks or bonds or any of them enumerated in subdivision one, two, three, four and five of this section or by the railroad bonds or any of them mentioned and described in subdivision seven of this section, but no such loan shall exceed ninety per centum of the cash market value of such securities so pledged. Should any of the securities so held in pledge depreciate in value after the making of such loan, the savings bank shall require an immediate payment of such loan or of a part thereof or additional security therefor, so that the amount loaned thereon shall at no time exceed ninety per centum of the market value of the securities so pledged for such loan.

9. Real estate as follows:

(a) A plot whereon there is or may be erected a building or buildings suitable for the convenient transaction of the busi-

ness of the savings bank, from portions of which not required for its own use a revenue may be derived.

(b) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.

(c) Such as it shall purchase at sales under judgments, decrees or mortgages held by it.

The trustees of a savings bank shall not be held liable for investing in state or municipal bonds named in the last list furnished by the Superintendent of Banks pursuant to section [52] of article two of this chapter, or in any railroad bonds mentioned in such list, which have been legally issued and properly executed, unless such savings bank shall have been notified by the Superintendent of Banks that, in his judgment, such bonds do not conform or have ceased to conform to the provisions of this section.

Deposit in Bank.

Trust funds may not be kept on deposit in a bank for a longer period than is reasonable while a proper investment is being obtained. *Matter of Wotton*, 59 A. D. 584; *aff'd.*, 167 N. Y. 629; *Matter of Knight*, 21 Abb. N. C. 388.

But a small fund may be deposited in a savings bank. *In re Wiley*, 98 A. D. 93.

Personal Security.

It is clear, both from the wording of the statutes and from the decisions, that a trustee may not invest trust funds in personal securities. *King v. Talbot*, 40 N. Y. 90; *Wilmerding v. McKesson*, 103 N. Y. 336; *Deobold v. Opperman*, 111 N. Y. 531.

Whether Section 8, of the Savings Bank Law, above quoted, changes this rule is a question. The section being new has not yet been construed, but it will probably be held to apply only to savings banks.

Speculations or Business Ventures.

Trust funds may not be employed in speculations or business ventures. *In re Hirsch's Estate*, 116 A. D. 367; *aff'd.*, 188 N. Y. 584; *Deobold v. Opperman*, 111 N. Y. 538; *Moore v. American Loan & Trust Company*, 115 N. Y. 65; *King v. Talbot*, 40 N. Y. 76.

Continuing Business of Creator of Trust.

A trustee may not continue the business of the creator of the trust, unless he is expressly authorized so to do by the trust instrument. *Wilmerding v. McKesson*, 103 N. Y. 329; *Matter of Myers*, 131

N. Y. 409; *Warren v. Union Bank of Rochester*, 157 N. Y. 259, 268; *Saperstein v. Ullman*, 49 A. D. 446; *Matter of McCollum*, 80 A. D. 362; *Farrelly v. Schaettler*, 121 A. D. 678.

Even when the power to continue a business is conferred by the trust instrument it is strictly construed. *Willis v. Sharp*, 113 N. Y. 586; *Miller V. King*, 168 N. Y. 635; *Thorn v. De Breteuil*, 179 N. Y. 78; *Matter of Bannin*, 142 A. D. 436.

Corporate Stocks and Bonds.

Except as specifically authorized by the statute, a trustee may not invest trust funds in corporate stocks and bonds. *Hogan v. De Peyster*, 20 Barb. 100; *Mills v. Hoffman*, 26 Hun. 594; *King v. Talbot*, 40 N. Y. 76; *Matter of Wotton*, 59 A. D. 584; *aff'd.*, 167 N. Y. 629; *Matter of Douglas*, 60 A. D. 64; *Matter of Hall*, 164 N. Y. 196.

Continuing Investments Made by Creator of Trust.

Although a few of the early New York decisions protected a trustee who continued investments made by the creator of the trust, it seems to be now well settled that a trustee should not continue such investments, if the trust instrument does not authorize it and if the investments are not sanctioned by law. *Goodwin v. Howe*, 62 How. Pr. 134; *Mills v. Hoffman*, 26 Hun. 594; *Matter of Weston*, 91 N. Y. 502; *Matter of N. Y. Life Ins. Co.*, 86 A. D. 247; *Matter of Wotton*, 59 A. D. 584; *aff'd.*, 167 N. Y. 629; *Matter of Avery*, 45 Misc. 529, 549; *Matter of Burr*, 48 Misc. 56, 74; *Toronto Trust Co. v. C. B. & Q. Ry. Co.*, 64 Hun. 1; *aff'd.*, 138 N. Y. 657; *Matter of Douglas*, 60 A. D. 64; *Matter of Myers*, 131 N. Y. 409; *Matter of Hirsch's Estate*, 116 A. D. 367; *aff'd.*, 188 N. Y. 584; *Cannon v. Quiney*, 65 Misc. 399.

There seems to be one comparatively recent contrary decision (*Matter of Krisfeldt*, 49 Misc. 26), but this case stands alone against the decided weight of authority.

Time Allowed for Disposing of Unauthorized Investments.

As a general rule, a trustee should convert unauthorized investments into legal securities within a year. *King v. Talbot*, 40 N. Y. 76; *Matter of Douglas*, 60 A. D. 64. But a trustee is permitted to use his discretion in the matter, and may not be liable for loss if he retains the investments for a longer period, awaiting a favorable market. *Matter of Weston*, 91 N. Y. 502; *Matter of Mercantile Trust Co.*, 156 A. D. 224.

Second Mortgages.

The wording of the statute, namely, that investments shall be made in mortgages upon unencumbered real property, clearly prohibits investments in second mortgages. This is the rule in New York. *Matter of Petrie*, 7 St. Rep. 718.

Investments Outside of the State.

An investment by a trustee in securities which are beyond the jurisdiction of the court will not be upheld, unless in presence of a clear and strong necessity or a pressing emergency. *Ormiston v. Olcott*, 84 N. Y. 339; *Matter of Reed*, 45 A. D. 196.

Where a trustee, in selling land in another state, was compelled to take a first mortgage in order to make the sale, he was not subject to the strict rule. *Denton v. Sanford*, 103 N. Y. 607.

But this rule does not apply to municipal and railroad bonds which are authorized by statute.

Right of Trustee to Erect New Buildings.

As to the right of a trustee to make repairs and erect new buildings, see *Smith v. Keteltas*, 62 A. D. 174.

Ratification of Unauthorized Investment.

The beneficiaries may elect to affirm or disaffirm an unauthorized investment, and having once elected they are bound. *Hine v. Hine*, 118 A. D. 585.

NORTH CAROLINA.

TRUSTEES GENERALLY.

Statutes of 1908.

(With Amendments to 1914.)

Sec. 1792. Funds Invested by Fiduciaries.—Guardians, trustees, and others acting in a fiduciary capacity, having surplus funds of their wards and *cestui que trustent* to loan may invest in United States bonds, or any securities for which the United States are responsible, or in consolidated bonds of the state of North Carolina, and in settlements by guardians, trustees and others acting in a fiduciary capacity, such bonds or other security of the United States, and such bonds of the state of North Carolina shall be deemed cash to the amount actually paid for same, including the premium, if any, paid for such bonds or other securities, and may be paid as such by the transfer thereof to the persons entitled.

Personal Security.

Under the Code as originally adopted, it seems that trustees had the right to invest in personal securities, provided the sureties on the bond were adequate. *Hurdle v. Leath*, 63 N. C. 597; *Boyett v. Hurst*, 54 N. C. 166; *Covington v. Leak & Wall*, 65 N. C. 594. The old section was strictly construed and a trustee was required to obtain a surety no matter how responsible the borrower might be. *Freeman v. Wilson*, 74 N. C. 368.

This was a departure from the English rule and gave the trustee a wider range for investment. *Whitford v. Foy*, 65 N. C. 265.

A loan to one member of a firm with the bond of a partner as security complies with the statute, for there is a responsible person "in addition to the borrower." *Watson v. Holton*, 115 N. C. 36.

But a note signed by a firm with one of the members as surety does not comply with the statute. *Boyett v. Hurst*, 54 N. C. 166.

Although the case of *Watson v. Holton* (supra) was decided in 1894, we cannot harmonize it and the present Code, Section 1792,

which seems to have been adopted in 1885 and does not provide for investment on personal security. Apparently the old section, 1592, has been repealed and it would not be safe now for a trustee to invest in such security.

In a recent case where a trustee in bankruptcy loaned funds to a manufacturing company in which he was interested, the investment was declared wrongful because made without an order of court. *Costner v. Cotton Mills Co.*, 155 N. C. 128.

Deposit in Bank.

Certificates of deposit do not constitute legal investments. Money may be deposited in bank for convenience in settling estates, but not as a permanent investment. *Collins v. Gooch*, 97 N. C. 186. See also *Moore v. Eure*, 101 N. C. 11.

Third Mortgage.

A trustee who owned a second mortgage on property invested trust funds in a third mortgage, the money lent being applied to the first mortgage. This was clearly a breach of trust. *McEachern v. Stewart*, 114 N. C. 370.

May Not Obtain Any Personal Advantages from the Estate.

A trustee may not purchase trust property at his own sale or obtain any personal advantages from his management of the estate. *Patton v. Thompson*, 55 N. C. 285; *Bruner v. Threadgill*, 88 N. C. 361; *Gibson v. Barbour*, 100 N. C. 192; *McEachern v. Stewart*, 114 N. C. 370.

Investment in Another State.

It seems that the courts of North Carolina do not approve of investments of trust funds in other states. *Collins v. Gooch*, 97 N. C. 186.

Duty to Invest.

It is the duty of a trustee to invest in interest-bearing securities. If he permits the funds to lie idle he is chargeable with interest. *McNeill v. Hodges*, 83 N. C. 504.

Whenever balances accumulate beyond the exigencies of the estate, it is the duty of an administrator to invest, unless he is holding the fund intact, ready for distribution. *Pickens v. Miller*, 83 N. C. 543.

When an executor is authorized by will to invest, he must invest as directed. He may not turn the funds over to a guardian. *Peacock v. Harris*, 85 N. C. 146.

A guardian is chargeable with interest when he permits funds to remain uninvested. *Wilson v. Lineberger*, 88 N. C. 416.

Confederate Notes.

As to investments in Confederate notes and the effect of the war upon the duties of trustees, see *Whitford v. Foy*, 65 N. C. 265; *Sud-dert^h v. McCombs*, 65 N. C. 186, and *Freeman v. Wilson*, 74 N. C. 368.

Failing Securities.

Where a trustee has notice that a security in which funds are invested is bad, he must exercise due diligence in protecting the beneficiary. *Williamson v. Williams*, 59 N. C. 62.

NORTH DAKOTA.

Revised Code, 1899.

(With Amendments to 1914.)

Sec. 4286. Investment of Trust Money.—A trustee must invest money received by him under the trust as fast as he collects a sufficient amount in such manner as to afford reasonable security and interest for the same.

Sec. 4287. Liability for Failure.—If the trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon if such omission is negligent merely and compound interest if it is willful.

TRUST COMPANY LAW.

Sec. 4688. Investment of Trust Funds.—Any sum of money not less than one hundred dollars, which will be collected or received by any such corporation in its trust capacity, and which money shall not be required for the purpose of such trust, or is not to be accounted for within one year from the date of such collection, receipt or deposit, shall be invested by such corporation as soon as practicable, and in such securities as are mentioned in Section 4678, and the net interest and profits of such investment, less the reasonable charges and disbursement of said company in the premises, shall be accounted for and paid over as a part of such trust; and the net accumulation of such interest and profits thereon shall likewise be invested and reinvested as a part of such principal; and such investments shall be received and allowed in the settlement of such trust.

Section 4678, above referred to, is as follows:

Sec. 4678. Capital Stock.—The amount of capital stock of any such corporation hereafter organized shall not be less than one hundred thousand dollars, and the same shall be

divided into shares of one hundred dollars each. No such corporation hereafter organized shall be authorized to transact any business, or exercise any powers as such, until the aforesaid minimum amount of capital stock shall have been subscribed for, and not less than fifty thousand dollars thereof shall have been actually paid in, invested and deposited as hereinafter provided. Said fifty thousand dollars shall be invested in bonds of the United States, or of the state of North Dakota, or in the bonds of other states, which shall have the approval of the state auditor, and state examiner, or in the bonds or obligations of townships, school districts, cities, villages, and counties within the state of North Dakota, which bonds or obligations have not been issued as a bonus for, or purchase of, or subscription to any railroad or other private enterprise, and whose total bonded indebtedness does not exceed five per centum of the then assessed valuation thereof; or in bonds or promissory notes, secured by first mortgages or deeds of trust, upon unincumbered real estate, situated within the state of North Dakota, worth three times the amount of the obligation so secured, and the deposit of such corporation shall not be permitted, at any time, to be less than fifty thousand dollars in amount, and not less than one-sixth of its capital stock.

Sec. 4689 provides that a trust company shall not loan its funds, moneys, capital, trust funds or other property to any director, officer, agent or employee.

Mingling Trust Funds.

When a trustee mingles trust funds with his own the whole fund is treated as a trust, and when he pays out a portion of the fund, it will be presumed that he made the payments from the portion of the fund which belonged to him. *Widman v. Kellogg*, 22 N. D. 396.

Guardian.

The statutes provide that if the estate of the ward is sold for the purpose of investment, "the guardian must make the investment according to his best judgment or in pursuance of any order that may be made by the county court." Revised Codes, Sec. 6564.

The legal authority both for sales and investments by guardians emanates from the County Court. *Shepard v. Hanson*, 9 N. D. 249.

OHIO.

TRUST COMPANIES.

General Code, 1910.

(With Amendments to 1914.)

Sec. 9781. All moneys or properties received on deposit or received in trust by such corporation, unless by the terms of the trust some other mode of investment is prescribed, together with its capital and surplus, excepting such as is required to be kept as a reserve, shall be invested in or loaned on only the following:

(a) The securities mentioned in paragraphs (b), (c), (d), (e) and (f) of Section ninety-seven hundred and fifty-eight, of this Act relating to commercial banks, subject to the limitations and restrictions contained in said paragraphs, except that trust companies shall not loan more than sixty per cent of the amount of their paid-in capital, surplus and deposits on notes secured by mortgage on real estate;

(b) Stocks, which have paid dividends for five consecutive years next prior to the investment, and bonds of corporations when the same are authorized by the affirmative vote of the majority of the board of directors or of the executive committee of such trust company; but the superintendent of banks may order that any such securities which he may deem undesirable shall be sold within six months;

(c) Promissory notes of individuals, firms or corporations, when secured by a sufficient pledge of collateral, approved by the directors, subject to the provisions of Sections ninety-seven hundred and fifty-four and ninety-seven hundred and fifty-five, of this Act.

Sec. 9782. All moneys or properties received in trust by such company, unless by the terms of the trust some other

mode of investment is prescribed, together with the capital and surplus of such corporation, may also be invested in ground rents, when authorized by a vote of the board of directors.

Sec. 9783. Not more than twenty per cent of the capital and surplus of any such corporation shall be invested in any one security or loan unless it be in the bonds or other interest-bearing obligations enumerated in paragraphs (b), (c) and (d) of Section ninety-seven hundred and fifty-eight, or in providing a building and vaults.

Sec. 9784. No investment in notes secured by mortgage on real estate shall be made by such corporation except upon the approval of the board of directors.

Sec. 9785. No trust company shall lend any part of its capital and surplus unless such loan be secured by bonds or stocks as collateral in which it is allowed to invest its capital, or by mortgage on real estate, where the amount loaned inclusive of prior encumbrances thereon does not exceed sixty per cent of the value of the real estate, including improvements, which shall be kept adequately insured; nor shall such corporation lend to any one person, firm, association or corporation more than twenty per cent of its paid-in capital and surplus.

Sec. 9786. This section provides that trust funds shall be kept separate from other funds.

Sec. 9788. In the management of money and property held by it as trustee, under the powers conferred in the foregoing sections, such trust company may invest the same in a general trust fund of the corporation. But the authority making the appointment, upon the conferring of it, may direct whether such money and property shall be held separately or invested in a general trust fund of the corporation; except that such corporation always shall follow and be governed by all directions contained in any instrument under which it acts.

Sec. 9754. A bank doing business as a commercial bank shall not lend, including overdrafts, to any one person, firm or corporation, more than twenty per cent of its paid-in capital and surplus, unless such loan be secured by first mortgage

upon improved farm property in a sum not to exceed sixty per cent of its value. The total liabilities, including overdrafts, of a person, company, corporation, or firm to any bank, either as principal debtor or as security or endorser for others, for money borrowed, at no time shall exceed twenty per cent of its paid-in capital stock and surplus. But the discount of bills of exchange drawn against actual existing values and the discount of commercial or business paper actually owned by the person, company, corporation or firm negotiating it, shall not be considered as money borrowed.

Sec. 9755. The deposits of funds in a bank or trust company, not duly designated as a depository by the board of directors as hereinafter provided, shall be held to be a loan within the meaning of the preceding section.

Sec. 9758. Subject to the provisions of the preceding section, commercial banks may invest their capital, surplus and deposits in, or lend them upon:

- (a) Personal or collateral securities;
- (b) Bonds or other interest-bearing obligations of the United States, or those for which the faith of the United States is pledged to provide payment of the interest and principal, including bonds of the District of Columbia; also bonds or other interest-bearing obligations of any foreign government;
- (c) Bonds or interest-bearing obligations of this or any other state of the United States;
- (d) The legally issued bonds or interest-bearing obligations of any city, village, county, township, school district, or other district or political subdivision of this or any other state or territory of the United States and of Canada;
- (e) Mortgage bonds or collateral trust bonds of any regularly incorporated company, which has paid, for at least four years, dividends at the rate of at least four per cent on their capital stock. Such loan shall not exceed eighty per cent of the market or actual value of such bonds, the purchase of which has been first authorized by the directors. All such securities having a fixed maturity shall be charged and entered

upon the books of the bank at their cost to the bank, or at par, when a premium is paid, and the superintendent of banks shall have the power to require any security to be charged down to such sum as in his judgment represents its value. The superintendent of banks may order that any such securities which he deems undesirable be sold within six months.

(f) Notes secured by mortgage on real estate, where the amount loaned thereon inclusive of prior encumbrances does not exceed forty per cent of the value of the real estate if unimproved, and if improved sixty per cent of its value, including improvements, which shall be kept adequately insured. Not more than fifty per cent of the amount of the paid-in capital, surplus and deposits of such bank at any time shall be invested in such real estate securities.

Guardians.—Under the duties of guardians and trustees, Section 10933, subdivision 7, of the Ohio code, provides that it is the duty of a guardian, within a reasonable time after he receives it, to loan or invest the money of his ward, in notes or bonds, secured by first mortgage on real estate of at least double the value of the money loaned or invested. The buildings thereon, if any, must be well insured against loss by fire and so kept by the mortgagor for the benefit of the mortgagee, until the debt is paid. On failure so to do, the mortgagee shall insure them and the expense to him be repaid by the mortgagor and be a lien on the property concurrent with the mortgage. Or he may invest such money in bonds of the United States, or of a state on which default has never been made in the payment of interest, or bonds of a county or city in this state, issued in conformity to law; or with the approval of the probate court, in productive real estate within this state, the title to which must be taken in the name of the guardian as such. He also shall manage such investments, and when deemed proper, change them into other investments of the above classes. No real estate so purchased shall be sold by the guardian, except with the approval of the probate court. If the guardian fails to loan or invest money of his ward within such reasonable time, he must account on

settlement for such money and interest thereon, calculated with annual rests.

Note.—This section refers to guardians only. In Ohio trust companies have no power to act as guardians.

TRUSTEES GENERALLY.

Page and Adams Code. Vol. 5. .

Sec. 11214. When they have funds belonging to the trust which are to be invested, executors, administrators, guardians, and trustees, may invest them in certificates of the indebtedness of this state, of the United States, or in such other securities as the court having control of the administration of the trust approves. When money coming into the hands of an executor, administrator, trustee, agent, assignee, attorney or officer is stopped therein by reason of litigation or other lawful cause, and if it will probably be so detained for more than six months, he may invest it during such detention in the manner that trust funds are now authorized by law to be invested, or as the probate or other court having jurisdiction of the pending litigation, or person aforesaid, directs.

Duty to Call in Estate.

It is the duty of an executor to convert the assets of an estate into money. He must collect the funds for distribution or investment as the case may be. *Weyer v. Watt*, 48 O. St. 545.

It seems that an executor should have one year within which to collect assets. *Gray v. Case School*, 62 O. St. 1.

Duty to Invest.

Failure on the part of a trustee to invest the funds within a reasonable time renders him liable for interest. *In re Spencer's Appeal*, 2 O. Dec. Reprint 510.

A trustee is required to invest the funds under his control. *In re Strickland*, 1 O. Dec. 703; *Armstrong v. Miller*, 6 Ohio 119.

Purchase of Real Estate.

With the consent of the probate court a trustee may purchase real estate for the benefit of the *cestui que trust*. *Fourth National Bank v. Hopple*, 6 O. Dec. 482.

Duty of Co-trustees.

When co-trustees leave the duty of investing the funds to one of their number, and he applies the money to his own use, all are liable for the loss. *State v. Guilford*, 15 Ohio 593.

Mingling Funds.

A trustee who deposits trust funds to his personal account is liable for any loss. *Shaw v. Bauman*, 34 O. St. 25; *Lotze v. Hoerner*, 11 O. Dec. Reprint 131.

It is important that the trustee keep the investments separate and in the name of the trust. *Brown v. Williams*, 9 O. C. C. N. S. 307.

But if he selects a reputable bank and deposits the funds in his name as trustee, he is not liable. *Odd Fellows' Ben. Assn. v. Person*, 2 O. C. D. 48.

Change of Real Estate Into Money.

Unless he has express authority by the trust instrument or by order of court, a trustee should not change realty into personalty. In *re Spencer's Appeal*, 2 O. Dec. Reprint 510.

Care Required of Trustee.

A trustee is bound to exercise ordinary prudence and good faith in investing the funds. In *re Spencer's Appeal*, 2 O. Dec. Reprint 510.

Where trustees exercise the diligence of ordinary men in making an investment, and have relied upon the advice of an attorney, they are not liable for a mistake in law. *Miller v. Proctor*, 20 O. St. 442.

Continuing Business of Testator.

In the absence of specific authority a trustee has no right to continue a business in which the creator of the trust has been engaged. When he is authorized to continue a business a trustee may be held liable personally, if he permits debts to be contracted beyond the amount embarked in the business. As a general rule the estate is not liable beyond the amount embarked in the business. *Lucht v. Behrens*, 28 O. St. 231.

Where trustees are expressly authorized by will to continue a business, they may carry on a partnership and settle its affairs at the appointed time for dissolution. *Jones v. Proctor*, 14 Ohio Cir. Dec. 80.

Mercantile Business.

Trustees have no right to loan trust funds to a manufacturing company on mere personal security, or to carry on a mercantile business. *Adams v. Nelson*, 1 O. Dec. 216.

Mortgage.

A mortgage on adequate real estate is proper. In re Spencer's Appeal, 2 O. Dec. Reprint 510.

The Guardian's Act of 1857 provided that the money of the ward should be lent within a reasonable time, and secured by a mortgage upon real estate, of double the value of the money lent.

"Ordinary prudence" would require a trustee to loan no more than two-thirds of the fair appraisal price. In re Spencer's Appeal, 2 O. Dec. Reprint 510.

Second Mortgage.

A trustee should not accept a second mortgage. In re Spencer's Appeal, 2 O. Dec. Reprint 510.

Bank Stock.

By the statutes, a trustee is limited in his investments. But where the trust instrument expressly provides, the scope of the statute may be extended. Where a will gave a trustee power to sell and "reinvest" the proceeds "in such manner as she or they may think best," the statute is extended and a trustee, exercising due care, may invest in bank stock. Willis v. Braucher, 79 O. St. 290.

Personal Security.

The law does not permit trustees to invest on mere personal security. But where trustees are given full power to manage a trust fund "as they think best for said poor," they may invest in real estate security or notes or bonds without security. Scott v. Trustees of Marion Township, 39 O. St. 153.

Must Follow Directions in Trust Instrument.

A trustee may not substitute his judgment for that of the creator of a trust. Where he is required to buy in at a foreclosure sale to protect the estate, he must sell as soon as practicable and reinvest as directed by the creator of the trust. Willis v. Holcomb, 83 O. St. 254.

Trustee to Wind up a Bank.

A trustee appointed to wind up the affairs of a savings bank has no power to loan funds which may come into his hands. He may make a special deposit in bank as trustee. Smith v. Fuller, 86 O. St. 57.

Use by Trustee.

The use by a trustee of the funds does not constitute embezzlement unless there is a fraudulent intent. State v. Meyer, 10 O. Dec. Reprint 746.

OKLAHOMA.

TRUST COMPANIES.

Statutes of 1903.

(With Amendments to 1914.)

Sec. 1125. The directors of corporations created under this Article shall have power of investing the moneys placed in their charge in loans secured by real estate or other sufficient collateral security, in public bonds of the United States or of this territory, or of any state, or in the bonds or stocks of any county or school district, or any incorporated city, town or village of any state or in this territory or in the Indian Territory. Such corporations shall own only such real estate as may be required for the transaction of their business, and such as they may acquire in the enforcement and collection of debts or liabilities due to them.

TRUSTEES.

Statutes of 1909.

Sec. 5396. Investment of Funds.—Pending the settlement of any estate on the petition of any party interested therein, the county court may order any money in the hands of the executor or administrators to be invested for the benefit of the estate, in securities of the United States. Such order can only be made after publication of notice of the petition in some newspaper to be designated by the judge.

Liability for Loss.

A trustee is responsible for ordinary care and diligence in taking possession of and managing the trust property. *Wyman v. Herard*, 9 Okla. 35.

Mingling Trust Funds.

If a trustee deposits trust funds with his own, the whole is considered trust property. *Fidelity & Deposit Co. v. Rankin*, 33 Okla. 7.

Guardian.

The statutes provide that the County Court may authorize and require a guardian to invest the proceeds of sales and any other of his ward's money in real estate or in any other manner most to the interest of all concerned. When property is sold for investment, the guardian must invest according to his best judgment or in pursuance of any order that may be made by the County Court. Revised Laws, Sections 6556, 6569.

Investment of School Funds.

What are considered legal investments in Oklahoma is indicated in Section 7942, Comp. Laws 1909, which provides that until the school funds may be permanently invested as provided by law, the commissioners of the land office are empowered to deposit them in banks or trust companies, but shall in every case select as security therefor: Bonds of the State of Oklahoma, bonds of the counties, school districts, cities and towns of this state, county and municipal bonds of other states, bonds of the United States, first mortgages on real estate and securities issued by municipalities in payment of paving, sewer, waterworks, electric lights or other public indebtedness, for which a special tax may be levied. *Columbia Bank & Trust Co. v. U. S. Fidelity & Guaranty Co.*, 126 Pac. Rep. 556.

OREGON.

TRUST COMPANIES.

General Laws of 1911.

(With Amendments to 1914.)

Investment of Trust Funds.—By Chapter 354 of the Laws of 1913, trust companies are authorized to invest trust funds “in bonds of the United States of America, or bonds of which the faith of the United States is pledged for the payment of the principal and interest, or in bonds or warrants, issued in pursuance of law, of any state of the United States of America, or any county, school district or municipal corporation therein, which has not defaulted in the payment of either principal or interest thereof, within five years previous to making such investment, or in notes or bonds secured by unincumbered real estate, the actual value of which shall not be less than twice the amount loaned thereon, or in bonds or notes secured by a pledge of collateral or personal property, the actual cash market value of which shall be at least twenty per cent more than the amount loaned thereon, or in such other bonds or securities as the Superintendent of Banks shall approve, and not otherwise.”

When Chargeable with Interest.

A trustee is not chargeable with interest unless he has used the funds for his own benefit, or has invested them to produce interest, or has permitted them to lie idle when they might have been invested. *Martin v. Martin*, 43 Or. 119.

Where a guardian makes a separate deposit of funds he should not be charged with interest. *Independent Foresters v. Keliher*, 36 Or. 501.

Mingling Funds.

Where a guardian mingled trust funds with her own and put part of the fund out at interest, it seems that she was chargeable with in-

terest only upon the portion of trust fund which was lent. *Independent Foresters v. Keliher*, 36 Or. 501.

Mortgages.

A trustee, in determining the value of land upon which he takes a mortgage, is required to exercise the judgment of ordinary men. If his action is questioned the burden is upon him to prove the adequacy of the security. If he fails to prove that he exercised due care in selecting the security, he is liable for any loss. *Roach's Estate*, 50 Or. 179.

Personal Loan.

A trustee is liable for the loss of funds lent without security. *Roach's Estate*, 50 Or. 179.

Corporate Stock.

It seems that Oregon follows the New Jersey rule and does not sanction an investment in corporate stock. *Roach's Estate*, 50 Or. 179.

Guardian.

The statutes provide that the court may authorize guardians to invest the proceeds of sales and any other of their wards' money in real estate or in any other manner most to the interest of all concerned. When property is sold for investment, the guardian must invest according to his best judgment or in pursuance of any order that may be made by the court. *Lord's Oregon Laws*, Vol. I, Secs. 1330-1349.

Good Faith and Due Diligence.

There is no statute regulating investments of trust funds, except the sections relating to guardians. Trustees are bound, therefore, to employ such prudence and diligence as men of discretion employ in the management of their own affairs. *Roach's Estate*, 50 Or. 197.

The Trust Company Law of 1913 provides for investments by such corporations when they act as trustees. This section, above quoted, is a guide for trustees generally.

PENNSYLVANIA.

INVESTMENTS BY TRUSTEES.

Purdon's Statutes.

Sec. 115. No act of the general assembly shall authorize the investment of trust funds by executors, administrators, guardians, or other trustees, in the bonds or stocks of any private corporation; and such acts now existing are avoided, saving investments heretofore made. (Constitution, Art. III, Sec. 22.)

Sec. 116. When an executor, administrator, guardian or trustee shall have in his hands any moneys, the principal or capital whereof is to remain for a time in his possession, under his control, and the interests, profits or income thereof are to be paid away, or to accumulate, or when the income of a real estate shall be more than sufficient for the purpose of the trust, such executor, administrator, guardian or trustee may present a petition to the Orphans' Court of the proper county, stating the circumstances of the case, and the amount or sum of money which he is desirous of investing; whereupon it shall be lawful for the court, upon due proof, to make an order directing the investment of such moneys in the stock or public debt of the United States, or in the public debt of this commonwealth or in the public debt of the city of Philadelphia, or on real securities, at such prices, or on such rates of interest and terms of payment respectively, as the court shall think fit; and in case the said moneys shall be invested conformably to such directions, the said executor, administrator, guardian or trustee shall be exempted from all liability for loss on the same, in like manner as if such investments had been made in pursuance of directions in the will or other instrument creating the trust; provided, that nothing herein contained shall authorize the court to make an order

contrary to the direction contained in any will or other instrument, in regard to the investment of such moneys.

Sec. 117. Section 14 of the act entitled "An act relating to Orphans' Court," approved the twentieth day of March, Anno Domini, one thousand, eight hundred thirty-two, be and the same is hereby extended so as to include all bonds or certificates of debt now or hereafter to be created and issued according to law by any of the counties, cities, school districts or municipal corporations of this commonwealth; which said bonds or certificates are hereby declared to be legal investments of moneys, by executors, administrators, guardians or trustees.

Sec. 118. It shall and may be lawful for any trustee, committee, guardian or other person acting in a fiduciary capacity, to invest trust moneys in ground rents, or other real estate, by leave of the proper court, under proceedings as provided in the act to which this is a supplement: provided, that it shall be the opinion of the court, that such investment will be for the advantage of the estate, and no change be made in the course of succession by such change of investment, as regards the heirs of next-of-kin of the *cestui que trust*.

Trust Companies.—The rules applicable to individual trustees apply also to trust companies. Such companies are also required to keep all trust funds and investments separate and apart from the assets of the company, and all investments made by the said companies as fiduciaries shall be so designated as that the trust to which such investment shall belong shall be clearly known.

Note.—It follows, therefore, that unless the trust instrument provides otherwise, the courts are authorized to direct investments in the following securities only:

1. Stocks or public debt of the United States.
2. Public debt of the Commonwealth of Pennsylvania.
3. Public debt of the City of Philadelphia.
4. Real securities, e. g., mortgages.
5. Real estate, including ground rents, and then only by leave of court.

6. All bonds or certificates of debt issued by any county, city, school district or municipal corporation of Pennsylvania.

It further follows:

1. One acting in a fiduciary capacity who before making an investment in any of the above-authorized securities obtains leave of court as provided in the acts is relieved of all responsibility for any subsequent default or depreciation. It is to be noted in this connection, however, that the courts are loath to entertain petitions asking for leave to invest in authorized securities. They very properly maintain that in the case of ordinary investments not involving any unusual exercise of judgment a trustee should not strive to escape a responsibility incident to the trust. Only unusual conditions would justify an application to the courts with its necessary delay and expense.

2. One acting in a fiduciary capacity who without leave of court invests in any of the above authorized securities is not thereby relieved of the obligation to exercise due care and reasonable prudence in the selection of the investment. The absence of such care or prudence would create a liability for any subsequent default or depreciation.

3. One acting in a fiduciary capacity who invests in any securities other than those above authorized and in the absence of any authority in the instrument creating the trust is by virtue of that fact alone and irrespective of the exercise of due care or prudence in other respects liable for any subsequent default or depreciation.

Duty to Invest.

It is the duty of a trustee to make the funds productive. If he is unable to find legal securities in which to invest he may apply to the court for instructions. *Hower's Appeal*, 22 W. N. C. 536; *Pray's Appeal*, 34 Pa. 100.

Even if the fund is small, a trustee is liable for interest if he fails to ask the direction of court. *McCauseland's Appeal*, 38 Pa. 466.

But he may retain a moderate sum for the uses of the trust. *Lukens' Appeal*, 47 Pa. 356.

Time Allowed for Investing.

A reasonable time should be allowed for making investments. The time depends on circumstances, but where a trustee has used ordinary

care, he will not be chargeable with interest for failure to invest within three months. Lukens' Appeal, 47 Pa. 356.

In view of the facility with which trust funds may now be deposited at interest until permanent investments can be made, it is doubtful whether any considerable time should be allowed. Noble's Estate, 178 Pa. 460.

An allowance of two months is not undue. Witmer's Appeal, 87 Pa. 120.

In the earlier decisions, six months were ordinarily allowed for investment. Worrell's Appeal, 23 Pa. 44.

Deposits in Bank.

A trustee, while seeking investment, should deposit trust funds in bank in his name as trustee, and if possible at interest. Where such a deposit draws three per cent interest, provided the trustee gives the bank two weeks notice of withdrawal, it is a reasonable provision and not inconsistent with a deposit. Consequently the trustee is not liable for loss if the bank fails. Law's Estate, 144 Pa. 499.

But a certificate of deposit in a private bank payable twelve months after date is a personal loan and not a proper deposit or investment. Baer's Appeal, 127 Pa. 360.

A certificate of deposit in a savings bank, although it is payable in three months and draws six per cent interest is not a legal investment. Frankenfield's Appeal, 11 W. L. N. 373; quoted, 127 Pa. 369.

But a trustee may keep funds on deposit for a reasonable time pending investment. The circumstances of each case determine what constitutes a reasonable time. When it appears that he could have invested in authorized securities, a deposit for eight months is an unreasonable time, and he is liable for loss due to failure of the bank. Clark's Estate, 56 P. L. J. 193.

A trustee who has permitted a fund to remain on deposit in a savings bank for fifteen years, drawing only three per cent interest, is guilty of supine negligence. A surcharge of one per cent per annum will not more than represent the loss to the estate. Whitecar's Estate, 147 Pa. 368.

Carrying on Business.

When a trustee is specifically authorized to carry on a business, he may sell on credit in the ordinary course of that business. Cline's Appeal, 106 Pa. 617.

Personal Security.

It is well settled in this state that a trustee who invests trust funds upon mere personal security is liable for any loss. Strong's Estate, 160 Pa. 13; Dietterich v. Heft, 5 Pa. 87; Hemphill's Appeal, 18 Pa. 303.

A loan on personal security may afford ground for dismissal of the trustee. *Johnson's Appeal*, 9 Pa. 416.

Interest.

Ordinarily a trustee is chargeable with the interest which might have been earned under a proper investment. It has not been usual to charge compound interest for ordinary neglect. *Graver's Appeal*, 50 Pa. 189; *Worrell's Appeal*, 23 Pa. 44; *Roberts' Estate*, 22 Pa. C. C. 4.

But in *Noble's Estate*, 178 Pa. 460, where a guardian mingled his ward's money with his own, interest was compounded on the surplus income. In a case of simple neglect, however, it would seem that simple interest only is chargeable. *Pennypacker's Appeal*, 41 Pa. 494.

Compounding interest by means of rests has not been generally adopted in Pennsylvania. *Dietterich v. Heft*, 5 Pa. 87.

Continuing Investments Made by Testator.

A trustee who for more than a year retained investments in stocks which came into his hands was not chargeable with neglect. Where a trustee receives investments which have been made by the creator of the trust, the strict legal rules do not apply and whether or not he will retain the investment is left to his discretion, exercised in good faith. *Coggins' Appeal*, 3 Walk. 426; *Estate of Williamson*, 12 Phila. 64; *Christian's Estate*, 13 Pa. C. C. 283.

But recent cases seem to indicate that unless the trust instrument authorizes the continuance of investments made by the creator of the trust, the wisest plan for the trustee is to call in the estate and invest in legal securities. *Skeer's Estate*, 236 Pa. 404; *Bartol's Estate*, 182 Pa. 407.

It seems that when bonds of doubtful value come into the hands of trustees as a part of the estate, it is their duty to convert them into cash and properly invest the proceeds. They are not permitted to exchange them for stock. *Locher's Estate* (No. 2), 219 Pa. 46.

Investment Outside of State.

Trust funds in Philadelphia may be invested in mortgages upon property in Camden. *Goulden's Estate*, 201 Pa. 491.

But this is because of the nearness of the two cities. The general rule is that a court will not authorize an investment, the collection of which must be enforced outside of the state. *Rush's Estate*, 12 Pa. 375; *Roberts' Estate*, 22 Pa. C. C. 4.

This applies also to bonds of a railroad located in another state. *Hoyt's Estate*, 2 Kulp. 286.

A trustee who invests in Western mortgages renders himself personally liable for the principal and interest which might have been secured in a legal investment. *Roberts' Estate*, 22 Pa. C. C. 4.

Second Mortgages.

A loan on second or third mortgages is illegal. *Makin's Estate*, 20 Pa. C. C. 587; *Gaw's Estate*, 12 Phila. 4; *Glesenkamp's Estate*, 48 P. L. J. 356.

Stocks and Bonds.

Article III, Sec. 22, of the Constitution, which prohibits the investment of trust funds in stocks or bonds of private corporations, repealed the earlier Acts of 1870 and 1873, which authorized trustees to invest in the bonds of the Pennsylvania Railroad Company, and the Act of 1872 which authorized investments in the bonds of the Philadelphia & Reading Railroad Company. The only exception to the rule is where a court orders such investment to be made by a Committee of a lunatic or drunkard. *Commonwealth v. McConnell*, 226 Pa. 244.

The rule applies to a bank, railroad, manufacturing or canal company. *Morris v. Wallace*, 3 Pa. 319; *Worrell's Appeal*, 23 Pa. 44.

Where a will gives a trustee full power to take charge of an estate and sell the real and personal property, at the same time allowing the trustee absolute discretion as to management, an investment in railroad bonds may be sustained. But it must clearly appear that the will gives authority for such an investment. *Barker's Estate*, 159 Pa. 518.

An investment in stock of the Bank of the United States has been held illegal. *Hemphill's Appeal*, 18 Pa. 303.

Where a will authorizes a trustee to sell any part of the estate and "invest the proceeds in such other securities as may in their judgment be best," it did not give the trustee unlimited authority, and he was liable for loss on bonds of a manufacturing corporation in another state. *Hart's Estate*, 203 Pa. 480.

A provision that a trustee may invest "in any property, real or personal, that he may see fit," does not warrant an investment in stock of a manufacturing corporation. *Pray's Appeal*, 34 Pa. 100.

When a trustee is authorized to invest "in first class mortgage bonds of railroad companies," the trustee is not liable when he exercises ordinary care and prudence in selecting the securities of a railroad in another state. *Bartol's Estate*, 182 Pa. 407.

Mingling Funds with Individual Property.

Where a trustee mingles trust funds with his own or invests in his own name, he is chargeable with interest and is liable for any loss. If he makes a profit the beneficiary may elect to take such profit. *Norris' Appeal*, 71 Pa. 106; *McAllister v. Commonwealth*, 30 Pa. 536; *Noble's Estate*, 178 Pa. 460; *Erie School Dist. v. Griffith*, 203 Pa. 123.

The rule applies to deposits in bank in his own name. *Commonwealth v. McAllister*, 28 Pa. 480; *Hemphill's Appeal*, 18 Pa. 303; *Columbian Bank's Appeal*, 147 Pa. 422.

When a trustee mingles trust funds with his own and uses both in his business, he is liable for the fund and may be made to account for the share of profits earned by the trust money. Robinett's Appeal, 36 Pa. 174; Baher's Appeal, 120 Pa. 33; Seguin's Appeal, 103 Pa. 139; Hertzler's Estate, 192 Pa. 531.

Trust Strictly Construed.

The creator of the trust may authorize investment in other than legal securities, but where such a provision in the trust instrument is relied on, it is the duty of the trustee to establish it with the utmost clearness. Where a trustee has invested in unauthorized securities and there is a loss, the fact that he exercised good faith and diligence will not protect him. Barker's Estate, 159 Pa. 518.

Order of Court.

Where a trustee invests in authorized securities, an order of court is not necessary. It seems that a court will not authorize an investment outside of the securities named by the legislature. Hoyt's Estate, 2 Kulp. 286; Noble's Estate, 33 P. L. J. 113.

Depreciation of Securities.

Where a trustee has made an investment in good faith, and has exercised ordinary care and prudence in selecting a legal investment, he is not liable for loss or depreciation in value of securities. Cridland's Estate, 132 Pa. 479; Bartol's Estate, 182 Pa. 407; Gouldsey's Estate, 201 Pa. 491.

Committee of Lunatic or Drunkard.

The statutes provide that a Committee of a lunatic or drunkard, under the direction of the Court of Common Pleas, shall invest the money of the lunatic or drunkard in such stocks or upon such security as shall be approved of by such court. Purdon's Digest, Vol. 2, p. 2396. Although there seems to be an exception here to the rule that a court will not authorize investments in corporate stock (*Commonwealth v. McConnell*, 226 Pa. 244), it is likely that Article III, Sec. 22, of the Constitution, applies, and that the Court of Common Pleas is thus limited in the investments which it authorizes.

Guardian.

There seems to be no specific statute governing investments by guardians. The Orphans' Court has jurisdiction over the estates of minors, and if a guardian would protect himself, an order of court should be obtained.

PORTO RICO.

Statutes of 1911.
(With Amendments to 1914.)

Tutors.—Section 3349, of the Statutes, gives tutors, who have charge of the person and property of infants and incompetent persons, power to continue the business or industry of the person, to alienate personal property, the value of which does not exceed two hundred dollars, without judicial authorization, to loan and borrow money and to withdraw capital for the purpose of investment.

Section 3353 provides that the tutor shall be liable for interest at the legal rate if he permits a fund to remain unproductive.

Section 3355 prohibits tutors from remunerating themselves without an order of court, and from purchasing the trust property for their own benefit without a court order.

Note.—For the general rules governing trustees, see Part I herein.

RHODE ISLAND.

TRUSTEES GENERALLY.

General Laws, 1909, p. 904.

(With Amendments to 1914.)

Sec. 12. Every trust instrument hereafter made, wherein no provision is made to the contrary, shall be deemed to give to the trustees or trustee thereunder for the time being full power, in their, his or her discretion, or, if a corporation, in the discretion of its officer or committee duly authorized, from time to time to invest, reinvest or change the investment, of all personal property held thereunder for the time being.

Order of Court.—Section 11 provides that the Superior Court may decree a sale or exchange of investments and may direct the application of the proceeds as shall be for the best interest of the beneficiary.

Guardians—General Laws.—Sec. 33, p. 1174.—Guardians may be authorized to invest any money in their hands, not needed for the payment of debts or for the support or education of their wards, in notes secured by mortgage upon unincumbered improved real estate situated in this state, or in the bonds or other indebtedness of the United States or of this state, or in the bonds or notes of any city or town in this state, or to make deposits thereof in any savings bank or trust company in this state approved by the probate court, as they shall deem best for the interest of his ward; and may also, under direction of the probate court, invest any such money in real estate or bank stocks in this state or in such other safe income-producing securities as the probate court may approve.

Right to Sell and Reinvest Does Not Devolve upon Successor.

The right given by the creator of the trust to sell or mortgage and reinvest at his discretion is a special discretionary power and does

not devolve upon a new trustee appointed by the court. *Bailey v. Burgess*, 10 R. I. 422.

Stocks and Bonds.

There is no statute or rule of court in Rhode Island requiring investment of trust funds in any particular securities. The rule of prudence and good faith is applied. Where corporate stocks and bonds came to the trustee from the testator they were declared to be proper investments for the trustee. *Peckham v. Newton*, 15 R. I. 321.

The court indicated that it would follow the Massachusetts rule and would not condemn an investment in stocks or bonds merely because that kind of security had been selected.

Continuing Business.

When the creator of the trust expressly provides for it, a trustee may continue the business. *Greene v. Greene*, 19 R. I. 619.

It is probable that the converse of this rule is true, and that a business may not be continued unless there is a specific provision.

Power to Change Investments.

Section 12 of Chapter 208, General Laws, provides that every trust instrument, when there is no provision to the contrary, shall be deemed to give trustees, in their discretion, full power from time to time to invest, reinvest or change the investment of any personal property held by them as trustees. Moreover, the Superior Court has power to direct trustees in the management of property. *Branch v. DeWolf*, 28 R. I. 542.

SOUTH CAROLINA.

Statutes of 1902.
(With Amendments to 1914.)

Sec. 2602. If any executor, or administrator with the will annexed, having power under the will to dispose of the estate or any part thereof, shall take such security as shall be clearly proved to be insufficient at the time, such executors, or administrators, and their sureties shall be liable to make good any loss or damages that the legatees or creditors may sustain, to be recovered by action against such executors, or by action on the bond of such administrators, wherein such damages shall be assessed by the verdict of a jury.

Duty to Invest.

It is the duty of a guardian or other trustee to keep the funds of the estate securely invested. *Nance v. Nance*, 1 S. C. 220; *Brabham v. Crosland*, 25 S. C. 539.

But a trustee may be guilty of a breach of trust if he calls in funds which are already well invested. If a trustee fails to invest trust moneys, the burden is upon him to show that it was necessary to retain the funds for the exigencies of the estate. Otherwise, he is chargeable with interest. *Burnside v. Robertson*, 28 S. C. 583.

Executors are required to invest funds within a reasonable time. *Taveau v. Ball*, 1 McC. Ch. 456.

Discretion.

A trustee's discretion is limited to the class of investments favored by the courts. *Sanders v. Rogers*, 1 S. C. 452; *Nance v. Nance*, 1 S. C. 221.

Guardian.

There seems to be no special statutory provision governing guardians, but the management of the estate is subject to the control of the Probate Court, and an order of court authorizing any particular investment or change of investment is desirable.

Care Required.

The rule in this state seems to be that a trustee is bound to manage the property with the care and diligence of a prudent man. *Crane, Boyleston & Co. v. Moses*, 13 S. C. 561.

Deposit in Savings Bank.

Where a trustee deposits funds in a reputable savings bank, and the interest is credited from time to time, he cannot be held liable for neglect. *Fitzsimmons v. Fitzsimmons*, 1 S. C. 413; *Twittz v. Houser*, 7 S. C. 164.

Reasonable Time Allowed to Invest.

A trustee is allowed a reasonable time within which to invest. The time allowed depends upon circumstances. *Crane, Boyleston & Co. v. Moses*, 13 S. C. 561.

Continuing Investments of Testator.

A trustee, as soon as practicable, should change the investments coming into his hands into legal securities. *Nance v. Nance*, 1 S. C. 218; *Spear v. Spear*, 9 Rich. Eq. 184.

First Mortgages and Public Securities.

The rule in this state seems to be that trustees should invest in public securities or in mortgages on unencumbered real estate of a value sufficient to guaranty the debt against all contingencies liable to occur. Bonds of individuals should not be taken in lieu of real securities, unless authorized investments cannot, in the exercise of reasonable diligence, be secured. *Nance v. Nance*, 1 S. C. 224.

Interest.

Simple interest is chargeable against the trustee, unless it appears that he has mingled trust funds with his own and subjected them to the risks of trade for his own profit or has disregarded the provisions of the trust. In such a case, compound interest may be charged. *Livingston v. Wells*, 8 S. C. 363.

Railroad Bonds.

Bonds of railroad corporations are personal securities, and are not proper investments for trust funds. *Allen v. Gaillard*, 1 S. C. 279.

But in this case the bonds were not secured by a mortgage on the property of the road. Whether they would have been a valid investment if secured by a first mortgage on the property does not appear.

Confederate Bonds.

Investments of trust funds in Confederate bonds prior to 1864 were usually considered proper, but after the fortunes of war had turned, the courts looked upon such investments with disfavor. *Brabham v. Crosland*, 25 S. C. 525; *Dickerson v. Smith*, 17 S. C. 239.

Purchase of Land and Mortgage for Part of Purchase Price.

The purchase of land with trust funds, encumbered with a mortgage to secure part of the purchase price, is a breach of trust. *Elliott v. Mackorell*, 19 S. C. 238; *Mathews v. Heywood*, 2 S. C. 239; *Nance v. Nance*, 1 S. C. 220; *Morton v. Adams*, 1 Strob. Eq. 72.

Deposits in Private Bank.

Where a trustee deposited funds with his own at a private bank, and the bank failed because of the Civil War, he was not liable for negligence. It was practically impossible to secure ordinary investments. *Crane, Boyleston & Co. v. Moses*, 13 S. C. 561.

But this case was decided after a consideration of the conditions brought on by Civil War, and is probably an exception to the rule that a trustee may not loan the funds on mere personal security. *Nobles v. Hogg*, 36 S. C. 322.

Personal Securities.

Although personal securities are considered as uncertain and usually improper investments, a trustee is protected if, after the exercise of reasonable diligence, he can find no better investment.

But he must sustain the burden of showing that such an investment was necessary. *Singleton v. Lowndes*, 9 S. C. 465; *Nance v. Nance*, 1 S. C. 220.

The fact that such securities were regarded as safe by men of prudence and were a favorite investment for capitalists, does not justify investment in them, even if the trustee acted in good faith. *Allen v. Gaillard*, 1 S. C. 279.

Stocks.

A trustee may not invest in corporate stock, unless he is so authorized by the trust instrument, and where the creator of the trust provides for investment in "stocks of the City of Charleston," this does not authorize an investment in stocks of banks of Charleston. *Womack v. Austin*, 1 S. C. 421.

SOUTH DAKOTA.

Code of 1913.

Sec. 1639. A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

Sec. 1640. If the trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon if such omission is negligent merely, and compound interest if it is willful.

TRUST COMPANIES.

Code of 1913, p. 133.

Sec. 19. The directors of any such corporation shall invest so much of the capital stock as is herein provided to be deposited in the State Treasury, in bonds secured by mortgages or notes and mortgages on unincumbered real estate within the State of South Dakota, worth double the amount secured thereby, or in bonds of the United States, or any state of the United States that has not defaulted on its principal or interest within ten years, or of any organized county or township, or incorporated city or village, or school district in this state, or in any other such state, duly authorized to be issued. And such board of directors may loan the balance of this capital stock and other moneys received by such corporation in trust, in bonds secured by mortgages, or notes and mortgages on unincumbered real estate within the State of South Dakota, worth double the amount secured thereby, or in bonds of the United States, or any state of the United States, that has not defaulted on its principal or interest within ten years; or of any organized county or township, or incorporated city or village, or school district in this state, or

in any other state duly authorized to be issued, or any such real or personal securities as they may deem proper.

Sec. 20. No trust company shall employ its money, directly or indirectly, in trade or commerce, by buying or selling goods, chattels, wares and merchandise, and shall not invest any of its funds in the stock of any other trust company or corporation, nor make any loans or discounts on the security of the shares of its own capital stock, nor be the purchaser nor holder of any such shares unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall within six months of the time of its purchase be sold or disposed of at public or private sale; after the expiration of six months any such stock shall not be considered as a part of the assets of any trust company; provided, that it may hold and sell all kinds of property which may come into its possession as collateral security for loans or any ordinary collection of debts, in the manner prescribed by law; provided, further, that any goods or chattels coming into the possession of any trust company as aforesaid shall be disposed of as soon as possible and shall not be considered as part of the trust company's assets after the expiration of six months from the date of acquiring the same.

Trust Funds Must Be Kept Separate.—Section 12, of the Trust Company Law, provides that trust funds must be kept separate from the other funds of the corporation.

Trustee Must Not Obtain Any Personal Benefit.

It is the duty of a trustee in a trust deed to notify the person for whom he acts when interest and taxes come due, and he may not acquire any right to the property through a tax sale. *Bush v. Froelich*, 14 S. D. 62.

Guardian.

The statutes provide that if the estate of a ward is sold for investment, the guardian "must make the investment according to his best judgment, or in pursuance of any order that may be made by the County Court." Compiled Laws, 1913, Vol. 2, p. 527.

Note.—For the general principles applicable to investments by trustees, see Part I herein.

TENNESSEE.

TRUST COMPANIES.

Laws of Tennessee, 1903, Ch. 377.

(With Amendments to 1914.)

Investments, Trust Funds. Sec. 5.—All funds held by such banks in any of the fiduciary capacities hereinbefore in this act mentioned, which as such it has under existing laws, power, authority or direction to invest, may, unless otherwise required by the principal, or by the court, or by the person creating the trust, agency or other fiduciary capacity, buy United States bonds or state bonds of the State of Tennessee, or first mortgage bonds of any railroad company or bonds of any county or municipal corporation; provided, that such bonds shall at the time of investment be at par or above par value, in the market where such bonds are usually listed and sold, and have regularly paid a dividend of not less than four per centum per annum for the last five years next preceding such investment, or in first mortgages on real estate; provided, that no sum shall be loaned on any mortgage for more than fifty per cent of the appraised value of the property mortgaged, nor for a longer period than ten years, and whenever any funds in the hands of any such bank are invested by any such bank as herein provided for, such bank shall in no case be liable for any greater amount as interest or otherwise, than the income, earnings, dividend, interest, rents or profits arising or derived from such investment, and in all settlements and accounts required of or made by such banks when acting in any of the fiduciary capacities mentioned in this act, where any investment has been made by it as herein provided, such bank shall not be required to account for or be liable for any sum in excess of the income, earnings, dividend, interest, rent or profit derived from such

investment; provided, whenever a bank shall receive any funds in the character and for the purpose herein declared, it shall be the duty of said bank to safely invest the same, and a failure to invest such funds shall not release the liability of the bank for interest upon the same.

TRUSTEES GENERALLY.

Code of 1896.

(With Amendments to 1914.)

Sec. 5433. The courts of law and equity in this state are hereby authorized to have the money and funds in the hands of clerks and receivers, or trustees, in litigation or under the control of said courts, invested in the public stocks or bonds of the United States, under such rules and orders in each case as may be legal and just.

Sec. 5434. Guardians, executors, administrators, and trustees, shall also be authorized and empowered to invest money and funds in their hands in the public stocks or bonds of the United States, and make report thereof to the county court of the county where such guardian, executor, administrator, or trustee resides, unless another mode of investment is required by will or deed of the testator or other person who has established the fund.

Sec. 4280. Where the profits of a ward's estate shall be more than sufficient to educate and maintain him, the guardian shall lend the surplus, and all other sums of money of the ward in his hands, upon bonds with good and sufficient sureties, or by mortgage on real estate, the amount loaned not to exceed one-half the real, actual value of the real estate mortgaged, to be approved by the court at its next session, and to be repaid with interest; or he may invest the same in state bonds.

Personal Security.

If a trustee fails to follow the specific instructions of the trust instrument, or invests the funds upon mere personal security, he does so at his peril. *Wynne v. Warren*, 49 Tenn. 118.

Purchase of Real Estate.

In the absence of express authority, a trustee has no power to purchase real estate as an investment. *Lester v. Vick*, 49 Tenn. 476.

Deposit by Trustee to His Own Credit.

Where a trustee deposited trust funds to his own credit in his business, not intending any wrong, and no loss resulting, although there was a technical breach of trust, he will not be charged with interest. *Vaccaro v. Cicalla*, 89 Tenn. 63.

Time Allowed for Investment.

It seems that three months is considered a reasonable time within which to invest funds. *Vaccaro v. Cicalla*, 89 Tenn. 63.

Guardians.

It seems that by Code Sections 4280, 4281, guardians may invest upon bond with sufficient sureties.

The law is not clear upon what constitutes good and sufficient sureties, but the courts have held guardians to a high degree of care in making such investments. *Merriman v. Camoran*, 9 Bax. 93.

And he must take the security in his name as guardian. *Sanders v. Forgasson*, 62 Tenn. 249.

Mingling Trust Funds.

A trustee who mingles trust funds with his own is liable for the whole fund. *Mason v. Whitthorne*, 2 Cold. 242.

Interest.

A faithful trustee will not be charged with more interest than he receives. But if he is guilty of unreasonable delay in investing, or has used the money for his own profit, he will be charged with interest. *Viccaro v. Cicalla*, 89 Tenn. 63; *Jones v. Ward*, 10 Yer. 161.

In case of fraud or gross neglect, a trustee may be charged with compound interest. *Tarbet v. McReynolds*, 4 Hum. 215.

Decree of Court.

A decree of the court of chancery is an absolute protection to a trustee in making an investment. *Williams v. Williams*, 84 Tenn. 164.

TEXAS.

TRUSTEES GENERALLY.

Statutes of 1911.

(With Amendments to 1914.)

Art. 3350. What Care to Take of Property of Estate.—It shall be the duty of the executor or administrator to take such care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate it shall be his duty to keep the same in tenable (tenantable) repair, extraordinary casualties excepted, unless directed not to do so by an order of the court.

Art. 3351. Duty in Regard to Plantation, Manufactory or Business.—If there be a plantation, manufactory or business belonging to the estate, and the disposition thereof is not specially directed by will, and if the same be not required to be at once sold for the payment of debts, it shall be the duty of the executor or administrator to carry on the plantation, manufactory or business, or cause the same to be done, or to rent the same, as shall appear to him to be most for the interest of the estate. In coming to a determination he shall take into consideration the condition of the estate and the necessity that may exist for future sale of such property for the payment of claims or legacies, and shall not extend the time of renting any of the property beyond what may consist with the speedy settlement of the estate.

TRUST COMPANIES.

Art. 538. Relating to Banking.—The directors of banks and trust companies created under this act shall have power of investing the moneys placed in their charge in loans se-

cured by real estate or other sufficient collateral security, in public bonds of the United States or of this state, in the bonds of any incorporated city, or county, or independent school district in this state.

GUARDIANS.

Revised Civil Statutes, 1911.

(With Amendments to 1914.)

Art. 4140. If at any time the guardian of the estate shall have on hand any money belonging to the ward beyond what may be necessary for the education and maintenance of such ward, such guardian shall, under the direction of the court, invest such money in the bonds of the United States or of the State of Texas, or loan the same for the highest rate of interest that can be obtained therefor.

Art. 4141. When the guardian loans the money, he shall take the note of the borrower, the same to be secured by mortgage with power of sale on unincumbered real estate situated in this state, worth at least double the amount of such note and interest, or on collateral notes secured by vendors' lien notes, as collateral, or may purchase vendors' lien notes; provided, that at least one-half has been paid on the land for which said notes are given; and he shall not deliver such money until such note and security have been taken and approved by the county judge of the county in which the guardianship is pending, which approval shall be by an order of such judge entered upon the minutes of his court, either in term time or vacation.

Art. 4142. Nothing contained in the last preceding Article shall relieve the county judge from responsibility on his bond as now provided by law.

Art. 4143. When the guardian may think it best for his ward to have any surplus money on hand invested in real estate, he shall file an application in writing in the court where the guardianship is pending, asking for an order of such court authorizing him to make such investment. Such application shall state the nature of the investment sought to

be made, and the reasons why the guardian is of the opinion that it would be for the benefit of the ward to have the same made.

Art. 4150. If the surplus money in the hands of the guardian belonging to the ward cannot be invested or loaned at interest as directed in this chapter, after due diligence to do so by the guardian, he shall be liable for the principal only of such money. But if the guardian neglects to invest such money or loan the same at interest when he could do so by the use of reasonable diligence, he shall be liable for the principal and also for the highest legal rate of interest upon such principal for the time he so neglects to invest or loan the same.

Neglect to Invest.

If, by the exercise of ordinary diligence, a guardian could have loaned his ward's money, he is liable for ten per cent interest which he could have made by the loan. *Freedman v. Vallie*, 75 S. W. 322.

Purchase of Real Estate.

A trustee, in the absence of authority, has no power to purchase real estate with trust funds. *Stone v. Kahle*, 22 Tex. Civ. 185.

Order of Court. Personal Security.

Guardians are required to invest funds in mortgages on real estate under the approval of court. Investments in individual notes with sureties are not warranted either in law or equity. *Smith v. Dibrell*, 31 Tex. 239.

The statute must be strictly followed. *Smoot v. Richards*, 8 Tex. Civ. 146, and 16 Tex. Civ. 662; *Smythe v. Lumpkin*, 62 Tex. 242; *Hurst v. Marshall*, 75 Tex. 452.

Time Allowed for Investment.

A trustee who has not invested the trust funds within two years is guilty of negligence. *Murchison v. Payne*, 37 Tex. 305.

UTAH.

TRUSTEES GENERALLY.

Compiled Laws of Utah, 1907.

(With Amendments to 1914.)

Sec. 3917. Powers of Executors. Continuing Business.—When the interests of creditors are not prejudiced thereby, the court may prescribe that the business in which the deceased was engaged at the time of his death may be continued for such length of time as may be necessary to permit the affairs of the estate to be wound up to the best advantage.

Sec. 3925. Court Order.—Pending the settlement of any estate, on the petition of any party interested therein, and upon good cause shown therefor, the court may upon notice order any moneys in the hands of the executors or administrators to be invested for the benefit of the estate in securities of the United States or other good securities to be approved by the court or judge.

Sec. 3930. Not to Profit.—He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than the appraisement, and if any is sold for less than the appraisement he is not responsible for the loss if the sale has been justly made.

Sec. 3931. No administrator or executor shall purchase any claim against the estate he represents; and if he pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid.

Sec. 4017. Guardians.—If the estate is sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the court.

Sec. 4018. The court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the court shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned therein; and the court may make such other orders and give such directions as are needful for the management, investment, and disposition of the estate and effects as circumstances require.

TRUST COMPANIES.

Sec. 429. Referring to Trust Companies. Investment of Capital.—Any corporation organized or existing under this chapter shall keep its capital stock in money on hand, or on deposit in solvent banks, or invested in the bonds of the United States or of this state, or of any county, municipality, or school district thereof, or in first mortgages on real estate situated in Utah, the amount invested in any mortgage not to exceed fifty per cent of the value of the land so mortgaged.

Note.—Whether or not a trust company may invest trust funds in the securities above mentioned without an order of court is not stated. It is probable that trustees may invest in such securities without an order of court.

Personal Benefit.

Unless authorized by a court of equity, a trustee may not purchase trust property either at private or judicial sale. Neither can he reap any personal benefit from the trust estate. *Hamilton v. Dooly*, 15 Utah 280; *Thum v. Wolstenholme*, 21 Utah 479.

Purchase of Property.

In the absence of authority, either from the trust instrument or by a court order, a trustee may not purchase property with trust funds. *Scheib v. Thompson*, 23 Utah 564.

Interest Chargeable for Violation of Trusts.

A trustee who violates the trust by making improper investments may be charged compound interest. *Scheib v. Thompson*, 23 Utah 564.

VERMONT.

TRUSTEES GENERALLY.

Statutes of 1906.

(With Amendments to 1914.)

Sec. 3009. Investment of Trust Estate.—The probate court may, on application of the trustee or a person interested in the trust estate, and after notice to other persons interested, authorize or require the trustee to sell all or any part of the real estate, stock or other personal estate, and invest the proceeds of such sale, with moneys in the hands of the trustee, in real estate, or in such manner as the court judges most beneficial to those interested in such trust estate.

Sec. 3189. Guardians.—This section is similar to Section 3009 and applies to guardians.

TRUST COMPANIES.

Laws of 1910.

No. 158. Sec. 73.—A trust company incorporated under the laws of this state may act as executor, administrator, guardian, assignee or trustee “under the same circumstances, in the same manner and subject to the same control by the court having jurisdiction, as a natural person.”

Sec. 77. Money Held in Fiduciary Capacity to be Kept Separate.—All moneys, property or securities received or held by a trust company in the capacity of executor, administrator, receiver, assignee, trustee or guardian shall be kept separate and distinct from its general business, and shall not be mingled with the investments of its assets, or be liable for the debts or obligations thereof; neither shall the bank's deposits and its surplus (other than the trust guaranty fund) be liable for any claims growing out of the holding or manage-

ment of funds or securities so received or held except as to any balance remaining after the satisfaction of the demands of other creditors.

Authorized Investments.—There are no specific provisions in the Statutes regulating investments by trustees. But the Vermont decisions are liberal toward trustees and it is safe to say that if a trustee exercises due care in selecting from investments which are legal for savings banks, he will be protected. The sections governing investments by savings banks are therefore given.

Sec. 4648. Mortgages, Limited.—No investment of deposits and surplus by savings banks, savings institutions and trust companies shall be made upon mortgages of real estate, except upon first mortgages of unencumbered real estate; and the amount of such investments shall not exceed three-fifths of the cash value of the property mortgaged. Not less than one-sixth of the amount of such mortgages shall be upon real estate in this state, and not more than eighty per cent of the amount of the assets shall be invested in mortgages of real estate; provided, that not exceeding sixty per cent of the amount of such assets may be invested in mortgages of real estate outside of this state. If the investment is on mortgage of unimproved or unproductive real estate, the amount of such investment shall not be more than forty per cent of the value thereof; and no mortgage investment shall be made by such corporation except upon the written approval of at least three trustees or their board of investment.

Sec. 4649. Capital.—The capital of savings banks and trust companies shall be subject to the same laws of investment as are applicable to their surplus and deposits.

Sec. 4652. Personal Security; Limitation.—No loans or investments on personal security shall be made except upon at least two approved names, not less than two of whom reside in this state or within fifty miles of the institution making such investment, or upon notes or accepted drafts given by individuals, firms or corporations residing without the state for goods manufactured within the state, and pay-

able to individuals, firms or corporations located within the state; and such personal loans or investments shall not be for a longer time than one year; and not more than one-third of the assets of a savings bank, savings institution or trust company shall be invested in personal securities.

Sec. 4654. Surplus and Deposits of Savings Institutions.

—With the foregoing exceptions, the moneys deposited in savings banks, savings institutions and trust companies and the income therefrom, shall be invested only as follows: in the public funds of the United States, or public funds for the payment of principal and interest of which the faith of the United States is pledged; in the bonds or notes of the counties, cities, towns, villages and school districts of the New England States, New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois and Iowa; in the stock of any national bank in the New England States, New York and the cities of Detroit, Chicago, St. Paul and Minneapolis; in the stock of any banking association or trust company incorporated under the authority of and located in this state; in the municipal bonds, not issued in aid of the railroads, of counties, cities and towns of five thousand or more inhabitants in the states of New Jersey, Wisconsin, Minnesota and Missouri, and in counties, cities and towns of ten thousand or more inhabitants in the states of Kansas, Nebraska, North Dakota, South Dakota, Oregon and Washington, but no investment shall be made in any of the counties, cities or towns in the states above mentioned, except in cities of fifty thousand or more inhabitants, where the municipal indebtedness of such county, city or town exceeds five per cent of its assessed valuation, and when not issued in aid of railroads; in the school bonds and independent school district bonds of New Jersey, Wisconsin, Minnesota and Missouri; and in the school bonds and independent school district bonds of school districts of two thousand or more inhabitants in the states of Kansas, Nebraska, North Dakota, South Dakota, Oregon and Washington, where the amount of such bonds issued does not exceed five per cent of the assessed valuation of the respective cities, towns and school districts; in the public funds of any of the

states named in this section; in notes with a pledge of any of the aforesaid securities, including deposit books or deposit receipts issued by a savings bank, savings institution or trust company, or banking association located in this state as collateral, such notes not to exceed the par or market value of such security; but no savings bank, savings institution or trust company shall hold, by way of investment or as security for loans, more than ten per cent of the capital stock of any bank, nor invest more than ten per cent of its deposits, nor more than thirty-five thousand dollars in the capital stock of any one bank; and no such investments shall be made in the capital stock of any such banks owned or loaned upon, to exceed in the aggregate one-fourth of the deposits of any savings bank, savings institution or trust company.

Sec. 4655. Limit of Loans on Personal Security.—No savings bank, savings institution or trust company shall loan to any one person, firm or corporation or the individual member thereof, more than five per cent of its deposits, nor more than thirty thousand dollars; nor shall such loans on personal security exceed ten thousand dollars until its deposits amount to one million dollars, after which the sums so loaned may be increased one per cent of the deposits in excess of the one million dollars; but this section shall not apply to United States bonds or municipal bonds, or notes with such bonds as collateral.

Repairs.

A trustee will be allowed sums for reasonable repairs and the erection of necessary farm buildings. *Field v. Wilbur*, 49 Vt. 157.

Mingling Trust Funds.

A trustee who mingles trust funds with his own is chargeable with any loss to the estate and with compound interest, at the highest legal rate, and is not entitled to commissions. *In re Hodge's Estate*, 66 Vt. 70.

Stocks and Bonds.

There is no special rule in this state prohibiting the investment of trust funds in stocks and bonds of private corporations, even if the corporations are located without the state. *Seoville v. Brock*, 81 Vt. 405.

Care Required.

A trustee who exercises ordinary prudence in selecting an investment is protected. He is not compelled to investigate the records of a corporation before retaining stocks and bonds as an investment. The opinion of well-informed men as to the character of such security and its standing in the market are sufficient evidence. *Scoville v. Brock*, 81 Vt. 405.

Personal Security.

A guardian lent some of his ward's money, taking only the promissory note of the borrower. The money was lost. The court found that the trustee had exercised due diligence and was not liable for the loss. *Barney v. Parsons*, 54 Vt. 623.

Guardians.

It seems that the statutes go no further than to provide that a guardian must manage his ward's estate "frugally and without waste." Public Statutes, 1906, Sec. 3183.

VIRGINIA.

TRUSTEES GENERALLY.

Code of 1904.

(With Amendments to 1914.)

Sec. 2676. Liability of Fiduciaries, Agents and Attorneys, for Debts Lost by Negligence or Failure to Make Defense.—If any fiduciary mentioned before in this chapter, or any agent or attorney-at-law, shall, by his negligence or improper conduct, lose any debt or other money, he shall be charged with the principal of what is so lost, and interest thereon, in like manner as if he had received such principal. And if any personal representative, guardian, curator or committee shall pay any debt the recovery of which could be prevented by reason of illegality of consideration, lapse of time, or otherwise, knowing the facts by which the same could be so prevented, no credit shall be allowed him therefor.

Sec. 2700. Court May Order Money in Hands of Fiduciary to be Invested.—When it appears by a report made as aforesaid or a special report of the commissioner, that money is in the hands of any fiduciary, the court, in the clerk's office of which said report is filed, may order the same to be invested or loaned out, or make such other order respecting the same as may seem to it proper.

Sec. 2700a. To Allow Executors and Other Fiduciaries to Invest in Virginia Three per Centum Bonds Issued by Virtue of an Act Approved February 14, 1882 (Preamble Omitted).—Executors and other fiduciaries may invest in the bonds issued under the act approved February 14, 1882, commonly known as the Riddleburger bonds, and the same shall be considered a lawful investment.

Sec. 2606. When Guardian to Pay Compound Interest on Annual Balances.—If any balancee, whether of profits received

or estimated, or of interest or principal, be due by any guardian, or other person acting as guardian, at the end of any year, which ought to be invested or loaned out within a reasonable time for the benefit of the ward, and the same remain in the hands of such guardian or other person, he shall be charged with interest thereon from the end of the year in which said balance arose, and so on *toties quoties* during the continuance of the trust.

Sec. 2608. Time Within Which Guardian Allowed to Invest Funds.—Whenever a guardian shall collect any principal or interest belonging to his ward, he shall have thirty days to invest or loan the same, and shall not be charged with interest thereon until the expiration of said time, unless he shall have made the investment previous thereto; in which case he shall be charged with interest from the time the investment or loan is made.

Sec. 399. Fiduciary Funds May be Invested in These Bonds.—Executors, administrators, and others acting as fiduciaries may participate in the settlement of the debt herein specified in the manner hereinbefore provided, and such action shall be deemed a lawful investment of their trust fund. Executors, administrators, and others acting as fiduciaries may invest in the bonds issued under this act, and the same shall be considered a lawful investment. (This statute refers to the public debt of Virginia and the provisions for adjustment with West Virginia.)

Time Allowed for Investment.

Guardians were formerly allowed six months within which to make investments of the funds coming into their hands. *Armstrong v. Walkup*, 53 Va. 608; *Hooper v. Royster*, 1 Munf. 119. But the statute now requires that the funds must be invested within thirty days. A guardian who has not made investments is not to be allowed compensation. *Jennings v. Jennings*, 22 Grat. 313. A guardian who receives the money of his wards, and does not invest it, but retains it in his own hands, is to be charged interest thereon from the date of its receipt, and not from the end of thirty days allowed by the statute. *Snavely v. Harkrader*, 29 Grat. 113.

Trustee May Retain Small Amounts on Deposit.

A trustee who keeps small balances on deposit may not be chargeable with interest. Each case depends upon its own circumstances. *Wood's Ex'r v. Garnett*, 6 Leigh 271.

Direction of Court.

When a receiver, or trustee appointed by a court, is ordered to collect and invest a sum of money for the benefit of a person in certain designated securities, he is liable for loss if he does not follow strictly the instructions of the court. *Carr's Admr. v. Morris*, 85 Va. 21; *Whitehead v. Whitehead*, 85 Va. 870.

Deposits in Bank.

Even where a trustee deposits trust funds in bank in his own name, he may not be liable for loss if the failure of the bank is due to the general destruction of the whole currency. *Parsley's Admr. v. Martin*, 77 Va. 376.

Good Faith.

Trustees acting with reasonable care and prudence and exercising their best judgment in good faith at the time of the transaction will be protected, notwithstanding unforeseen loss to the estate. *Cooper v. Cooper*, 77 Va. 198; *Elliott v. Carter*, 9 Grat. 559.

Care Required.

In making investments of the trust fund, a trustee is required to exercise the same care and prudence that the average man would exercise in his own affairs. *Cogbill v. Boyd*, 77 Va. 450; *Davis v. Harman*, 21 Grat. 200.

Advice of Counsel.

A claim by the trustee that he acted under the advice of counsel is no excuse for a violation of the trust or for mismanagement. *Cogbill v. Boyd*, 77 Va. 450.

Mortgage Security.

A trustee who accepts a bond and mortgage upon real estate whose value is less than or only equal to the loan, knowing that the obligor on the bond is of doubtful financial standing, is guilty of negligence. *Cogbill v. Boyd*, 77 Va. 450.

Interest Chargeable Against Trustee.

When a trustee is imprudent in his investments and loss results, he will be charged with the loss and interest on the fund at six per cent. *Cogbill v. Boyd*, 79 Va. 1.

Personal Security. Continuing Investments.

A trustee should not invest the funds of the estate upon mere personal security. Neither is he justified in retaining such investments although they were made by the creator of the trust. *Miller v. Holcomb's Ex'or.*, 50 Va. 674. But see also *Patterson v. Horsley*, 70 Va. 263, 271.

An administrator took over an estate in which there were railroad bonds of \$6,000 and a note of the railroad for \$4,000. The bonds were depreciating in value, but at the request of some of the beneficiaries the administrator held the bonds in the hope that they would later appreciate. He made numerous requests of the road for the payment of the notes and payment was promised. Finally the road failed. The court decided that since the funds had come to the administrator in this form from the deceased and since the administrator had exercised good faith, he should not be responsible for the loss. Some doubt was expressed as to the freedom from liability on the note for failure to attempt to collect it. *Watkins v. Stewart*, 78 Va. 111. The case cannot be said to be direct authority for the proposition that a trustee may continue the investments made by the creator of the trust. The case of *Miller v. Holcomb's Ex'or.* (supra) is probably better law.

Purchase of Land.

A guardian has no power to purchase land with his ward's money unless authorized by a court of chancery. *Boisseau v. Boisseau*, 79 Va. 73.

Neither may he convert personalty into realty or realty into personalty. *Id.*

General Rule.

The general rule in Virginia as to investments seems to be that a trustee is not responsible for loss of trust funds if he has exercised good faith and a fair discretion. Apparently the courts have accepted the English rule as a guide. *Elliott v. Carter*, 50 Va. 541, 559.

Duty to Invest.

A trustee who retains trust funds for an unreasonable time is chargeable with interest. *Lomax v. Pendleton*, 5 Va. 465; *Beverleys v. Miller*, 4 Va. 415; *Fultz v. Brightwell*, 77 Va. 742; *Elliott's Admr. v. Howell*, 78 Va. 297.

Mingling of Funds.

Where a trustee mingles trust funds with his own money and the funds are lost, he is liable. But it seems that if the loss is not due either to the failure of the bank or the carelessness of the trustee,

but to an external cause, the trustee should not be liable merely because he mingled funds. *Davis v. Harmon*, 62 Va. 194.

Investment Must be Judged as of the Date Made.

The act of a trustee in making an investment must be judged in connection with the circumstances at the time. An investment in Confederate bonds sustained. *Myers v. Zetelle*, 62 Va. 733.

Loan on Real Estate Security—Duty to Investigate.

It is the duty of a trustee to investigate the adequacy of the security upon which he loans trust funds, and if he accepts mortgages on real estate which is subject to liens and encumbrances, he may be guilty of negligence, even if he has acted on the advice of counsel. *Burwell v. Burwell's Guardian*, 78 Va. 574.

Delay in Recording Instrument.

Trustees who invest in mortgages must personally see to it that the security is obtained before the money is turned over, and they must be prompt in recording the mortgages. Otherwise loss falls upon them. *Cogbill v. Boyd*, 77 Va. 450.

Duty of Substituted Trustee.

Where a receiver or substituted trustee is appointed to continue a trust, it is his duty to inform himself as to the legality of previous investments and as to the time when securities may be barred by limitations. Failing in this duty he is liable for loss and it is no defense that he relied upon the care and prudence of the previous trustee. He should inform himself as to whether, in case of a judgment obtained by the former trustee, an execution was issued and the proper steps taken to keep the judgment alive. *Rush's Ex'r. v. Steele*, 93 Va. 526.

Confederate Bonds and Slaves.

There are numerous cases dealing with the question of the liability of trustees who invested in Confederate bonds and slaves. Generally in these cases the liability of the trustee for loss depended upon the circumstances. If he invested in such bonds, after it was generally known that they were depreciating, he was guilty of negligence. *Fultz v. Brightwell*, 77 Va. 742; *LeGrand's Admr. v. Fitch*, 79 Va. 635; *Douglass v. Stephenson's Ex'r.*, 75 Va. 747; *Crouch v. Davis, Ex'r.*, 64 Va. 62; *Crickard's Ex'r. v. Crickard*, 66 Va. 410; *Campbell v. Campbell*, 63 Va. 649.

WASHINGTON.

TRUST COMPANIES.

Laws of 1903.

(With Amendments to 1914.)

Chapter 176. Sec. 6. Loans to Officers, etc., Prohibited.—

No trust company now in existence or hereafter organized shall make any loan to any officer, stockholder or employee from its trust funds, and such trust company shall not permit any officer, stockholder or employee to become indebted to it in any way out of its trust funds; any president, vice-president, director, secretary, treasurer, cashier, teller, clerk or agent of any such corporation who knowingly violates this section, or who aids or abets any officer, clerk or agent in any such violation, shall be guilty of a felony and punished accordingly.

Sec. 9. Loans, etc., on Own Stock.—No trust company shall make any loan on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall within one year from the time of its purchase be sold or disposed of at public or private sale; provided, that nothing in this section contained shall apply to any loan made before the passage of this act.

TRUSTEES GENERALLY.

Statutes of 1910.

(With Amendments to 1914.)

Sec. 1545. Administrator Not to Profit or Suffer Loss.—

He shall not make profit by the increase nor suffer loss by the decrease or destruction, without his fault, of any part of the

estate. He shall account for the excess when he shall have sold any part of the estate for more than the appraisement; and if any has been sold for less than the appraisement, he shall not be responsible for the loss if the sale has been justly made.

Sec. 1548. Shall Not Purchase Claim Against Estate.—No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account so much as he shall have actually paid.

Sec. 1641. Court May Change Investment.—The Court may, on the application of a guardian or any other person, said guardian having due written notice thereof, order and decree any change to be made in the investment of the estate of any ward that may to such court seem advantageous to such estate.

Deposit in Bank.

An executor may deposit funds of the estate in a reputable bank, provided he does so in his name as executor. In such a case he is not liable for loss. In re Kohler's Estate, 15 Wash. 613.

Must Exercise Ordinary Care and Good Faith.

Where a trustee has exercised good faith and the care and prudence of the average person, it seems that he will not be liable for loss. Sharp v. Greene, 22 Wash. 677.

Guardians.

The statutes provide that the guardian shall manage the estate for the best interests of the ward. They also provide that "the court may, upon application of a guardian or any other person, said guardian having due written notice thereof, order and decree any change to be made in the investment of the estate of any ward that may to such court seem advantageous to such estate." Statutes, Vol. 1, Secs. 1636, 1641.

WEST VIRGINIA.

TRUSTEES GENERALLY.

Code of 1913.

Sec. 3956. If any balance, whether of profits received or estimated, or of interest or principal, be due by any guardian, or other person acting as guardian, at the end of any year, which ought to be invested or loaned out within a reasonable time, for the benefit of the ward, and the same remain in the hands of such guardian or other person, he shall be charged with interest thereon from the end of the year in which such balance arose, and so on *toties quoties* during the continuance of the trust.

Sec. 3958. Whenever a guardian shall collect any principal or interest belonging to his ward, he shall have thirty days to invest or loan the same, and shall not be charged with interest thereon until the expiration of said time, unless he shall have made the investment previous thereto, in which case he shall be charged with interest from the time the investment or loan was made. (There is a proviso that the guardian may apply each year to the Circuit Court of Chancery, which has jurisdiction over guardians, for instructions regarding investments and may thus be relieved from failure to invest.)

Sec. 3976. The proceeds of sale (of lands held in trust) shall be invested under the direction of the court, for the use and benefit of the persons entitled to the estate, and in case of a trust estate, subject to the uses, limitations, and conditions, contained in the writing creating the trust. But into whosoever hands the said proceeds may be placed, the court shall take ample security, and from time to time require additional security, if necessary, and make any other proper orders for the faithful application of the fund, and for the

management and preservation of any property, or securities in which the same may be invested, and for the protection of the rights of all persons interested therein, whether such rights be vested or contingent.

Sec. 4049. When it appears by a report (of a fiduciary) made as aforesaid, or a special report of the commissioner of accounts, that money is in the hands of any such fiduciary, the court before which the report so comes may order the same to be invested or loaned out, or make such other order respecting the same as may seem to it proper.

TRUST COMPANIES.

Trust Funds to be Kept Separate.—Section 4, of the Trust Company Law, provides that, "Every such company shall keep all trust funds and investments separate and apart from the assets of the company, and all investments made by the said company as fiduciary shall be so designated that the trust to which such investment shall belong shall be clearly shown; and such funds shall be held for the uses designated and shall not be liable for any other obligations of such company." There seem to be no other provisions regarding investments by trust companies of funds held in trust.

Deposit in Bank.

A trustee may deposit trust funds in a reputable bank provided he does so in a separate account from his own and in his name as trustee. *Wagner v. Coen*, 41 W. Va. 351.

Confederate Bonds.

As to liability for investment in Confederate Bonds, see *Knight v. Watt's Admr.*, 26 W. Va. 175; *McClure Admr. v. Johnson*, 14 W. Va. 432.

Must Know that Funds are Invested as Directed.

A trustee who paid a cashier of his bank trust funds to be invested in certain United States bonds and who merely assumed that the bonds were kept by the bank for him, but never saw them, is guilty of negligence. When it appeared later that the cashier had not purchased the bonds, the trustee was held liable for the loss. *Key v. Hughes' Ex'rs.*, 32 W. Va. 184.

English Rule Applied.

It seems that the responsibility of trustees is no less rigid in West Virginia than it is in England. *Key v. Hughes' Ex'rs.*, 32 W. Va. 184.

Time Allowed Guardian to Invest.

A guardian should invest the money received by him within thirty days. *Hescht v. Calvert*, 32 W. Va. 215.

Duty to Collect and Invest.

It seems to be the duty of a trustee to call in the estate and invest in authorized securities. *Anderson v. Piercy*, 20 W. Va. 282.

It is the duty of a guardian to collect the assets of the estate and exercise care and diligence in the management of the property and he will be liable for a good debt which he fails to collect. *Roush v. Griffith*, 65 W. Va. 752.

WISCONSIN.

TRUSTEES GENERALLY.

Statutes of 1911.

(With Amendments to 1914.)

Sec. 4030. Power of Testamentary Trustee to Sell.—The county court on application of any such trustee or any person interested, may, after notice to all parties in interest, authorize and require such trustee to sell any property so held in trust in such manner as the court may direct and to invest the proceeds of such sale in such manner as will be most for the interest of all concerned therein; and such court may from time to time make such orders and decrees as it may deem just and reasonable in relation to the sale, management, investment and disposition of such trust property and to the settlement of the accounts of such trustee, but no such order shall be made in violation of the terms of the trust. To keep the trust property from being removed out of the state or improperly or illegally used or invested, the county court shall have the same power as surrogate courts to issue the writ of *ne exeat* and injunctions.

Sec. 3986. Power of Guardian to Sell.—The county courts, in their respective counties, on the application of a guardian or of any person interested in the estate of any ward, after such notice to all persons interested therein as the court shall direct, may authorize or require the guardian to sell and transfer any stock in public funds or in any bank or other corporation, or any other personal estate or effects held by him as guardian and to invest the proceeds of such sale and also any other moneys in his hands in real estate or in any other manner that shall be most for the interest of all concerned therein; and the said court may make such further orders and give such directions as the case

may require for managing, investing and disposing of the estate and effects in the hands of the guardian.

Statutes of 1911.

Sec. 2100b. Every executor, guardian or trustee, except where it is otherwise expressly directed by the will or instrument of trust, if any, may invest trust funds in governmental and real estate securities as provided by law, and also in the bonds of any state of the United States, except the states of Nevada and Wyoming, and except also the present territories of the United States (and such territories shall continue to be excepted after admission to statehood). In the bonds of any city, village or county in the State of Wisconsin, and also in the bonds of any county in any other of the states included herein, having a population of not less than twenty-five thousand, and also in the bonds of any county in any other of the states included herein having a population of not less than thirty-five thousand, provided that such city, county or village shall not have defaulted in the payment of any of its bonded indebtedness during ten years immediately preceding such investment, and provided, further, that the existing indebtedness of any such city or county be restricted under the laws of the state wherein it may be situated to a sum in the aggregate not exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for the state and county taxes previous to the incurring of such indebtedness. In the mortgage bonds or preferred stock of any steam railway or railroad corporation in the United States owning and operating not less than five hundred miles of track, which has paid dividends upon its entire capital stock for ten years immediately preceding such investment. In promissory notes, which are or may be amply secured by pledge of any of the bonds, stock or securities in which investment is hereinbefore authorized.

Nothing herein contained shall be construed to affect the power or jurisdiction of any court of the State of Wisconsin in respect to trusts and trustees, nor to affect any powers or

authority as to investments conferred by will or other instrument of trust.

TRUST COMPANIES.

Statutes of 1911.

Sec. 2024-77m. Every Such Corporation Shall Keep its Trust Accounts in Books Separate from its Own General Books of Account.—All funds and property held by it in a trust capacity shall, at all times, be kept separate from the funds and property of the corporation, and all deposits by it of such funds in any banking institution shall be deposited as trust funds to its credit as trustee, and not otherwise. Every security in which trust funds or property are invested, shall, at once, upon the receipt thereof, be transferred to it as trustee, executor, administrator, guardian, receiver, assignee or other trustee, as the case may be, for each particular trust or fund by name and immediately entered in the proper books as belonging to the particular trust whose funds have been invested therein. Any change in such investment shall be fully specified in and under the account of the particular trust to which it belongs, so that all trust funds and property shall be readily identified at any time by any person.

Sec. 2024-77n. It shall not loan its fund, trust or otherwise, to any salaried officer or employee, nor shall any such officer or employee become, in any manner, indebted to it by means of an overdraft, promissory note, account, endorsement, guaranty or any other contract; nor shall such corporation establish more than one office of deposit nor establish nor maintain branches.

Transfer of Securities Owned by Trust Company to Trust Estate.—Section 2024-77k provides expressly that a trust company which owns securities which are legal investments for trustees may transfer them to a trust estate the same as if the securities were owned by a third person.

Dealing with Trust Property.

A trustee is not permitted to purchase the trust property or to deal with it for his own benefit. Such transactions are presumptively

fraudulent, and the beneficiary is not bound thereby. *Ludington v. Patton*, 111 W. 208; *Cook v. Berlin Woolen Mill Co.*, 43 W. 433; *Gillett v. Gillett*, 9 W. 194.

Deposit in Bank.

A trustee may deposit trust funds in a bank of good standing, but he must do so in his name as trustee, or executor or guardian. *Williams v. Williams*, 55 W. 300; *Booth v. Wilkinson*, 78 W. 652; *O'Connor v. Decker*, 95 W. 202.

Must Observe Strictly the Terms of the Trust Instrument.

Where the trust instrument provided that the trustee should invest in "United States bonds, or other safe manner," it would seem that the other investments should be as safe as United States bonds. If an investment is made in any other manner, it should be absolutely safe and protected by ample security. There is a question whether or not a trustee who invests in other securities does not become an insurer of such investment. *Andrew v. Schmitt*, 64 W. 664.

But where the powers conferred by the trust instrument are broad and indicate clearly that the trustee shall not be restricted to legal securities, the trustee is bound only to exercise good faith and prudence. *In re Allis' Estate*, 123 W. 223.

Duty to Invest.

It is the duty of a trustee to invest a trust fund in accordance with the provisions of the instrument creating the trust, or in legal securities. If he fails to invest he will be charged with interest at the rate which he could have obtained upon real estate security of the proper character, or with the common rate of interest. *Andrew v. Schmitt*, 64 W. 664.

Government and Real Estate Securities.

Formerly a trustee was not protected against loss unless he invested in government or real estate securities, or unless he secured the approval of the court for investment in other securities. *Simmons v. Oliver*, 74 W. 633.

In recognition of the decision in this case, the legislature passed a law (Laws of 1903, Ch. 317) authorizing only such investments. The purpose of the act was to extend the field for investments, provided the trustee first obtained an order of court. No other investment came within the protection of the law. *In re Allis' Estate*, 123 W. 223. But Section 2100b, of the statutes as amended in 1909, now provides for investments in certain named securities, including preferred stock and railroad bonds, without the necessity of an order

of court. But investments have now been extended by Section 2100b of the Laws of 1909.

Business or Trade.

A guardian who invested his ward's money in a trade was guilty of conversion and became personally liable for the fund. *Martin v. Davis*, 80 W. 376.

And where a guardian who is a member of a partnership, invests his ward's money in the business with the consent of the other partners, the debt becomes a partnership debt. *German American Bank v. Magill*, 102 W. 582.

Investments by Trust Company as Trustee.

Section 1791h, Statutes of 1898 (no longer in force), which gave trust companies the right to invest in certain named securities, "or in such real or personal securities as they may deem proper," did not apply to funds held by a trust company as executor, administrator or trustee. Such funds must be invested in government or real estate securities or in other securities which have been approved by court order. *In re Allis' Estate*, 123 W. 223. The field of investments has now been extended by Section 2100b, Statutes of 1911 (quoted above), to bonds and stock of railroads which meet certain requirements.

Foreign Countries—Other States.

Even where a testator gives his trustees "full authority to invest the trust properties in such manner as they shall deem best, with no responsibility for losses, provided they act honestly and in good faith," they must be held to a reasonable discretion and may not invest the fund beyond the jurisdiction of the court, unless expressly authorized so to do. *Pabst v. Goodrich*, 133 W. 43.

Continuing Business of Deceased.

In the absence of specific authority, a trustee has no power to continue the business of a deceased. He has a reasonable time within which to close out the business and may purchase goods for that purpose where it is necessary for the preservation of the estate. *Beggs, Sons & Co. v. Behrend's Estate*, 145 N. W. Rep. 207.

WYOMING.

TRUST COMPANIES.

Statutes of 1910.

(With Amendments to 1914.)

Sec. 4065. The board of directors of any such loan and trust company are hereby authorized to invest the capital of such association, and such money as they may receive from other persons or associations for investment, and to keep the same invested in good securities; and it shall be lawful for such association to make investments of its capital and the funds accumulated by its business and moneys received from other persons and associations, for investment as aforesaid, or any part thereof, in bonds and mortgages on unincumbered real estate and chattel property worth at least double the amount loaned, and also in any and all warrants and bonds of this state or any other state or territory, or of the United States, or the bonds and warrants of any county, city, town or school district of this state, legally authorized to issue such warrants or bonds.

Sec. 5576. Referring to an Executor.—He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than the appraisement, and if any is sold for less than the appraisement, he is not responsible for the loss, if the sale has been justly made.

Sec. 5759. Referring to Guardians.—If the estate is sold for the purposes mentioned in this chapter, the guardian must apply the proceeds of the sale to such purchase, as far as necessary, and put out the residue, if any, on interest, or re-invest it in the best manner in his power, until the capital is wanted for the maintenance of the ward and his family, or

the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Sec. 5760. Investment of Proceeds.—If the estate is sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to law.

Sec. 5772. Court May Order Investment of Funds.—The court or judge, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the court or judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate or in any other manner most to the interest of all concerned therein; and the court or judge may make such other orders and give such directions as are needful for the management, investment and disposition of the estate and effects as circumstances require.

Note.—There are no decisions by the higher courts relating directly to the investment of trust funds. For the general rules applicable, see Part I, herein.

PART III.

Typical List of State, Municipal and Railroad Bonds Which Are Legal in Three of the Principal States and Which May Serve as a Guide to Trustees in Those States Which Permit Trustees to Invest in Such Bonds.

The following list of state, municipal and railroad bonds, which are legal investments in three of the leading states, is given in order that trustees in other states which permit investment in securities of this character may have a guide. The lists for Massachusetts and Connecticut have been secured from the banking commissioners of those states and are the most recent published information on the subject. The list for New York has been compiled from the tables of Messrs. White & Kemble and by the kind assistance of Mr. H. D. Robbins, of N. W. Halsey & Co., and Mr. W. S. Scott, of Wm. A. Read & Co. We believe that it is entirely reliable.

The lists may change from time to time, but the securities given are not subject to great fluctuation in value, and are likely to remain legal investments for trustees and savings banks.

A list of legal investments adopted by the Supreme Bench of Baltimore has been given at page 110, and it is safe to assume that these securities are legal generally throughout the state of Maryland.

May we suggest, in conclusion, that each state could render a real service to trustees by following the practice of Massachusetts and Connecticut in having the state banking department prepare and publish a list of investments which are legal for savings banks and trustees. A convenient source of reliable information would thus be provided and a trustee would not be compelled to rely upon the advice of individuals

or corporations, or the lists prepared by them. Such a service by the state would cost little in comparison with its great value to the many savings banks and trustees who are compelled to select legal investments. Recognizing this fact, the new banking law for the State of New York provides that hereafter the banking department shall prepare such a list of securities.

CONNECTICUT.

First. Bonds of the United States and District of Columbia.

United States Bonds, 2s, 1930; United States Bonds, 3s, 1918; United States Bonds, 4s, 1925; U. S. Panama Canal 2s, 1936; U. S. Panama Canal 3s, 1961; District of Columbia, 3.65s, 1924.

Second. State Bonds.

California	Montana
Colorado	Nevada
Connecticut	New Hampshire
Delaware	New York
Florida	North Dakota
Idaho	Pennsylvania
Indiana	Rhode Island
Kansas	South Dakota
Kentucky	Tennessee
Maine	Texas
Maryland	Vermont
Massachusetts	Washington
Minnesota	Wisconsin
Missouri	Wyoming

Third. Legally issued bonds and obligations of any county, town, city, borough, school district, fire district, or sewer district in the State of Connecticut.

Fourth. Cities outside of Connecticut.

Akron, Ohio	Altoona, Pa.
Alameda, Cal.	Amsterdam, N. Y.
Albany, N. Y.	Anderson, Ind.
Allentown, Pa.	Atlantic City, N. J.

Auburn, N. Y.	Decatur, Ill.
Aurora, Ill.	Denver, Colo.
Baltimore, Md.	Des Moines, Iowa
Bangor, Me.	Detroit, Mich.
Battle Creek, Mich.	Dubuque, Iowa
Bay City, Mich.	Duluth, Minn.
Beaumont, Tex.	Easton, Pa.
Bellingham, Wash.	East Liverpool, Ohio
Berkeley, Cal.	East St. Louis, Ill.
Binghamton, N. Y.	Elgin, Ill.
Bloomington, Ill.	Elizabeth, N. J.
Boston, Mass.	Elmira, N. Y.
Broekton, Mass.	El Paso, Tex.
Buffalo, N. Y.	Erie, Pa.
Burlington, Vt.	Evansville, Ind.
Burlington, Iowa	Fall River, Mass.
Butte, Mont.	Fitchburg, Mass.
Cambridge, Mass.	Flint, Mich.
Camden, N. J.	Fort Wayne, Ind.
Canton, Ohio	Fresno, Cal.
Cedar Rapids, Iowa	Galesburg, Ill.
Chelsea, Mass.	Gloucester, Mass.
Chester, Pa.	Gloversville, N. Y.
Chicago, Ill.	Grand Rapids, Mich.
Cincinnati, Ohio	Green Bay, Wis.
Cleveland, Ohio	Hamilton, Ohio
Cohoes, N. Y.	Hammond, Ind.
Colorado Springs, Colo.	Harrisburg, Pa.
Columbus, Ohio	Haverhill, Mass.
Concord, N. H.	Hoboken, N. J.
Council Bluffs, Iowa	Holyoke, Mass.
Covington, Ky.	Indianapolis, Ind.
Cranston, R. I.	Jackson, Mich.
Cumberland, Md.	Jacksonville, Fla.
Dallas, Tex.	Jamestown, N. Y.
Danville, Ill.	Jersey City, N. J.
Davenport, Iowa	Joliet, Ill.
Dayton, Ohio	Joplin, Mo.

Kalamazoo, Mich.	Oakland, Cal.
Kansas City, Kan.	Omaha, Neb.
Kansas City, Mo.	Oshkosh, Wis.
Kenosha, Wis.	Oswego, N. Y.
Kingston, N. Y.	Ottumwa, Iowa
Knoxville, Tenn.	Paducah, Ky.
LaCrosse, Wis.	Pasadena, Cal.
Lafayette, Ind.	Passaic, N. J.
Lancaster, Penn.	Paterson, N. J.
Lansing, Mich.	Pawtucket, R. I.
Lawrence, Mass.	Peoria, Ill.
Lewiston, Me.	Perth Amboy, N. J.
Lexington, Ky.	Philadelphia, Pa.
Lima, Ohio.	Pittsburgh, Pa.
Lincoln, Nebraska.	Plainfield, N. J.
Los Angeles, Cal.	Portland, Me.
Louisville, Ky.	Portland, Ore.
Lowell, Mass.	Portsmouth, Ohio
Lynn, Mass.	Providence, R. I.
Madison, Wis.	Quincy, Ill.
Malden, Mass.	Quincy, Mass.
Manchester, N. H.	Racine, Wis.
Mansfield, Ohio	Reading, Pa.
Milwaukee, Wis.	Richmond, Ind.
Moline, Ill.	Rochester, N. Y.
Muncie, Ind.	Rockford, Ill.
Muskegon, Mich.	Rock Island, Ill.
Nashua, N. H.	Rome, N. Y.
Newark, N. J.	Sacramento, Cal.
Newark, Ohio	Saginaw, Mich.
New Albany, Ind.	St. Joseph, Mo.
New Bedford, Mass.	St. Louis, Mo.
New Brunswick, N. J.	St. Paul, Minn.
Newburgh, N. Y.	Salem, Mass.
New Castle, Pa.	San Antonio, Tex.
Newport, Ky.	San Francisco, Cal.
Newport, R. I.	Schenectady, N. Y.
Newton, Mass.	Scranton, Pa.

Sheboygan, Wis.	Toledo, Ohio
Shenandoah, Pa.	Topeka, Kan.
Sioux City, Iowa.	Trenton, N. J.
Somerville, Mass.	Troy, N. Y.
South Bend, Ind.	Utica, N. Y.
South Omaha, Neb.	Waco, Tex.
Springfield, Ill.	Waltham, Mass.
Springfield, Mass.	Waterloo, Iowa
Springfield, Mo.	Watertown, N. Y.
Springfield, Ohio	Wichita, Kan.
Stockton, Cal.	Wilkes-Barre, Pa.
Steubenville, Ohio	Williamsport, Pa.
Syracuse, N. Y.	Worcester, Mass.
Tacoma, Wash.	York, Pa.
Taunton, Mass.	Youngstown, Ohio
Terre Haute, Ind.	Zanesville, Ohio.

Fifth. Railroad Bonds

BONDS OF NEW ENGLAND COMPANIES.

Boston & Albany R. R.	.....	Debentures	.....	3½s, 1951
"	"	"	.....	3½s, 1952
"	"	"	.....	4s, 1933
"	"	"	.....	4s, 1934
"	"	"	.....	4s, 1935
"	"	"	.....	4½s, 1937
"	"	"	.....	5s, 1938
"	"	"	.....	5s, 1963
Boston & Lowell R. R.	.....	Debentures	.....	4s, 1915
"	"	"	.....	4s, 1916
"	"	"	.....	4s, 1917
"	"	"	.....	4s, 1918
"	"	"	.....	4s, 1926
"	"	"	.....	4s, 1927
"	"	"	.....	4s, 1929
"	"	"	.....	4s, 1932
"	"	"	.....	3½s, 1919
"	"	"	.....	3½s, 1921

Boston & Lowell R. R.....	Debentures	.....	3½s, 1923
“ “ “ .....	“	.....	3½s, 1925
“ “ “ .....	“	.....	4½s, 1933
Concord & Montreal R. R.....	Consolidated	.....	4s, 1920
“ “ “	Debentures	.....	4s, 1920
“ “ “ .....	“	.....	3½s, 1920
Connecticut River R. R.....	Debentures	.....	3½s, 1921
“ “ “ .....	“	.....	3½s, 1923
“ “ “ .....	“	.....	4s, 1943
Conn. & Passumpsic River R. R.....			4s, 1943
Fitchburg R. R.....	Debentures	.....	4s, 1915
“ “ .....	“	.....	4s, 1916
“ “ .....	“	.....	4s, 1920
“ “ .....	“	.....	3½s, 1920
“ “ .....	“	.....	3½s, 1921
“ “ .....	“	.....	4s, 1925
“ “ .....	“	.....	4s, 1927
“ “ .....	“	.....	4s, 1928
“ “ .....	“	.....	4s, 1937
“ “ .....	“	.....	4½s, 1928
“ “ .....	“	.....	4½s, 1932
“ “ .....	“	.....	4½s, 1933
“ “ .....	“	.....	5s, 1934
Troy & Boston R. R.....	First	.....	7s, 1924
Vermont & Mass. R. R.....	Plain	.....	3½s, 1923

MAINE CENTRAL SYSTEM.

Belfast & Moosehead Lake R. R..	First	.....	4s, 1920
Collateral Trust			5s, 1923
Consolidated Refunding			5s, 1961
Dexter & Newport R. R.....	First	.....	4s, 1917
Dexter & Piscataquis R. R.....	“	.....	4s, 1929
European & No. American Ry....	“	.....	4s, 1933
Knox & Lincoln Ry.....			5s, 1921
Maine Shore Line R. R.....	First	.....	6s, 1923
Notes			5s, 1919
Portland & Ogdensburg Ry.....	First	.....	4½s, 1928

Portland Terminal Co. (Guar.)..First	4s,	1961
Portland & Rumford Falls Ry..Consolidated	4s,	1926
Penobscot Shore Line R. R.....First	4s,	1920
Somerset Railway	"	5s, 1917
" "	Consolidated	4s, 1950
" "	First and Ref'ding.	4s, 1955
Sinking Fund Improvement.....	4½s,	1916
" " "	4½s,	1917
Upper Coos R. R.....First	4s,	1930
" " "	Extension	4½s, 1930
New London Northern R. R.....First	4s,	1940

NEW YORK, NEW HAVEN & HARTFORD SYSTEM.

N. Y., N. H. & H. R. R.....Convertible	3½s,	1956
" " " "	"	6s, 1948
" " " "	Debentures	3½s, 1947
" " " "	"	3½s, 1954
" " " "	"	4s, 1947
" " " "	"	4s, 1955
" " " "	"	4s, 1956
" " " "	Eur'p'n Loan Deb's.	4s, 1922
Boston & New York Air Line....First	4s,	1955
Boston & Providence.....	Debentures	4s, 1918
Branford Electric Company.....First	5s,	1937
Consolidated Railway	Debentures	4s, 1954
" "	"	4s, 1955
" "	"	4s, 1956
" "	"	3s, 3½s and 4s, 1930
Cent. New England Ry. (Guar)..Refunding	4s,	1961
Danbury & Norwalk R. R.....Consolidated	5s and 6s,	1920
" " "	General	5s, 1925
" " "	Refunding	4s, 1955
Greenwich Tramway Company...First	5s,	1931
Harlem River & Port Chester.....	4s,	1954
Hartford Street Railway.....First	4s,	1930
" " "	Debentures	4s, 1930

Hartf'd, Man. & Rockville Ty. Co.	First	.....5s,	1924
Holyoke & Westfield R. R.	.....	41/4s,	1951
Housatonic Railroad	Consolidated	.....5s,	1937
Meriden Horse R. R.	.....	5s,	1924
Meriden, South. & Com. Ty. Co.	First	.....5s,	1928
Middletown Horse Ry.	.....	5s,	1914
Montville Street Ry.	.....	5s,	1920
Naugatuck R. R.	.....	4s,	1954
“ “	Debentures	.....31/2s,	1930
New England R. R.	Consolidated	.....4s,	1945
“ “ “	.....	5s,	1945
New Haven & Centerville St. Ry.	First	.....5s,	1933
New Haven & Northampton R. R.	Refunding	.....4s,	1956
New Haven & Derby R. R.	Consolidated	.....5s,	1918
New Haven Street Railway	Consolidated	.....5s,	1914
New London Street Railway	First	.....5s,	1923
N. Y. Connecting Ry. (Guar.)	.....	41/2s,	1953
New York & Stamf'd Ry. (Guar.)	.....	4s,	1958
N. Y., W. & Boston Ry. (Guar.)	.....	41/2s,	1946
N. Y., Providence & Boston R. R.	General	.....4s,	1942
Norwich Street Railway	First	.....5s,	1923
Old Colony R. R.	Debentures	.....4s,	1938
“ “ “	.....	4s,	1924
“ “ “	.....	4s,	1925
“ “ “	.....	31/2s,	1932
Norwich & Worcester R. R.	.....	4s,	1927
Pawtuxet Valley R. R.	First	.....4s,	1925
Providence & Springfield R. R.	.....	5s,	1922
Providence & Worcester R. R.	.....	4s,	1947
Providence Terminal Co.	.....	4s,	1956
Portland Street Railway	.....	5s,	1916
Stafford Springs St. Ry.	.....	5s,	1956
Torrington & Winchester St. Ry.	.....	5s,	1917
Worcester & Conn. Eastern	.....	41/2s,	1943
Sullivan County R. R.	First	.....4s,	1924
Vermont Valley R. R.	First	.....41/2s,	1940

ATCHISON, TOPEKA & SANTA FE SYSTEM.

General Mortgage	4s, 1995
Chicago & St. Louis Ry.....First	6s, 1915
Chic., Santa Fe & California Ry.. “	5s, 1937
Eastern Oklahoma Division..... “	4s, 1928
Hutchinson & Southern Ry..... “	5s, 1928
San Fran. & San Joaquin Val. Ry. “	5s, 1940
Transcontinental Short Line..... “	4s, 1958

ATLANTIC COAST LINE SYSTEM.

First Consolidated	4s, 1952
Alabama Midland Ry.....First	5s, 1928
Ashley River R. R..... “	8s, 1915
Atlantic Coast Line of So. Caro.. “	4s, 1948
Brunswick & Western R. R..... “	4s, 1938
Charleston & Savannah Ry..... “	7s, 1936
Florida Southern R. R..... “	4s, 1945
Northeastern R. R.....Consolidated	6s, 1933
Norfolk & Carolina R. R.....First	5s, 1939
“ “ “	Second
“ “ “	5s, 1946
Petersburg R. R.....Consolidated A.....	5s, 1926
“ “ “	B.....
“ “ “	6s, 1926
Richmond & Petersburg R. R....First.....	6s and 7s, 1915
“ “ “	Consolidated ...
“ “ “	4½s, 1940
Sanford & St. Petersburg R. R....First	4s, 1924
Savannah, Fla. & Western Ry... “	5s and 6s, 1934
Silver Springs, Ocala & Gulf R. R. “	4s, 1918
Wilmington & Weldon R. R.....General....	4s and 5s, 1935
Wilmington & New Berne R. R..First	4s, 1947

BALTIMORE & OHIO SYSTEM.

Baltimore & Ohio R. R.....Extended	4s, 1935
“ “ “	First
“ “ “	4s, 1948
“ “ “	Prior Lien
“ “ “	31½s, 1925
Southwestern Division	31½s, 1925
Balt. & New York R. R. (Guar.)..First	5s, 1939
Cleveland T. & V. R. R. (Guar.).. “	4s, 1995

Huntington & Big Sandy R. R....First	.....6s, 1922
Monongahela River R. R.....	.....5s, 1919
Ohio River R. R.....	.....5s, 1936
Ravensw'd, Spen. & Glenville Ry.	.....6s, 1920
Schuylkill R. E. S. R. R. (Guar.).	.....4s, 1925
West Va. & Pittsburg R. R.....	.....4s, 1990
Washington Term Co. (Guar.)... "	....3½s and 4s, 1945

CENTRAL RAILWAY OF NEW JERSEY.

General Mortgage	5s, 1987
Amer. Dock & Imp. Co. (Guar.)..First	.....5s, 1921

CHICAGO, MILWAUKEE & ST. PAUL SYSTEM.

General Mortgage	3½s, 4s, and 4½s, 1989
Gen. and Ref. (Not in report but probably legal)....	4½s, 2014
Chicago, Mil. & Puget Sound....First	.....4s, 1949
Chicago & Lake Superior Div.... "	.....5s, 1921
Chicago & Mo. River Div..... "	.....5s, 1926
Chicago & Pac. Western Div.... "	.....5s, 1921
Dakota & Gt. Southern Ry..... "	.....5s, 1916
Dubuque Division .....	.....6s, 1920
Fargo & Southern Ry..... "	.....6s, 1924
Milwaukee & Northern.....Extended	.....4½s, 1934
La Crosse & Davenport Div.....First	.....5s, 1919
Wisconsin & Minn. Div..... "	.....5s, 1921
Wisconsin Valley Div..... "	.....6s, 1920

CHICAGO, BURLINGTON & QUINCY SYSTEM.

General Mortgage	4s, 1958
Burlington & Missouri River.....Consolidated	.....6s, 1918
Denver Extension	4s, 1922
Illinois Division	3½s and 4s, 1949
Iowa Division	4s and 5s, 1919
Nebraska Extension	4s, 1927
Nodaway Valley R. R.....First	.....7s, 1920
Republican Valley R. R..... "	.....6s, 1919
Tarkio Valley R. R..... "	.....7s, 1920

CHICAGO & NORTHWESTERN SYSTEM.

General Mortgage	3½s and 4s, 1987
Boyer Valley R. R.....First	3½s, 1923
Cedar Rapids & Missouri R. R.... “	7s, 1916
Collateral Trust	4s, 1926
Consolidated Sinking Fund.....	7s, 1915
Des Plaines Valley Ry.....First	4½s, 1947
Fremont, Elkhorn & Mo. Val. R.R.Consolidated	6s, 1933
Iowa, Minn. & Northwestern Ry..First	3½s, 1935
Mani., Green Bay & Northw'n Ry. “	3½s, 1941
Mankato & New Ulm Ry..... “	3½s, 1929
Minn. & So. Dakota Ry..... “	3½s, 1935
Milwaukee & State Line Ry..... “	3½s, 1941
Mil., Sparta & Northwestern Ry.. “	4s, 1947
Mil., Lake Shore & Western Ry.. “	6s, 1921
Ashland Division	“
Extension and Imp.....	5s, 1929
Marshfield Extension	First
Michigan Division	“
Minnesota & Iowa Ry..... “	3½s, 1924
Northwestern Union Ry..... “	7s, 1917
Princeton & Northwestern Ry.... “	3½s, 1926
Peoria & Northwestern Ry..... “	3½s, 1926
Sioux City & Pacific R. R..... “	3½s, 1936
St. Louis, Peoria & Northwest'n. “	5s, 1948
Southern Iowa Ry..... “	3½s, 1925
St. Paul East'n G. T. Ry. (Guar.). “	4½s, 1947
Winona & St. Peter R. R.....Extended	7s, 1916
Wisconsin Northern	First

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA SYSTEM.

Consolidated	6s and 3½s, 1930
Chicago, St. Paul & Minn. Ry....First	6s, 1918
North Wisconsin Ry..... “	6s, 1930
St. Paul & Sioux City R. R..... “	6s, 1919
Sault Ste. Marie & Southw'n Ry.. “	5s, 1915
Superior Short Line Ry..... “	5s, 1930

CHICAGO, ROCK ISLAND & PACIFIC SYSTEM.

Chicago, Rock Island & Pac R. R. First Mortgage6s, 1917
 Chicago, Rock Island & Pac. Ry.. General4s, 1988

DELAWARE & HUDSON SYSTEM.

Adirondack Ry.First4½s, 1942
 Albany & Susq. R. R. (Guar.)...Convertible3½s, 1946
 Delaware & Hudson Canal Co.—
 Pennsylvania DivisionFirst7s, 1917
 Delaware & Hudson Co.First and Ref'g....4s, 1943
 Schenectady & Duanesburg R. R. First6s, 1924

DELAWARE, LACKAWANNA & WESTERN SYSTEM.

Bangor & Portland Ry.First6s, 1930
 Morris & Essex R. R. (Guar.)....Refunding3½s, 2000
 Warren R. R. (Guar.)..... “3½s, 2000

GREAT NORTHERN SYSTEM.

First and Refunding.....4¼s, 1961
 Eastern R. R. of Minn., No. Div..First4s, 1948
 Minneapolis Union Ry. “5s and 6s, 1922
 Montana Central Ry. “5s and 6s, 1937
 Spokane Falls & North'n Ry.... “6s, 1939
 St. Paul, Minn. & Manitoba Ry.. Cons'd 4s, 4½s, and 6s, 1933
 Montana Extension4s, 1937
 Pacific Extension4s, 1940
 Wilmar & Sioux Falls Ry.First5s, 1938

ILLINOIS CENTRAL SYSTEM.

Collateral Trust3½s, 1950
 Cairo Bridge4s, 1950
 Chic., St. Louis & New Orl's R. R. Consolidated ..3½s, 1951
 Memphis Division4s, 1951
 First Mortgage, Gold3½s and 4s, 1951
 First Mortgage, Gold Extension.....3½s, 1951
 First Mortgage, Sterling Exten.....3s and 4s, 1951

First Mortgage, Sterling Exten.....	31½s, 1950
Kankakee & Southwestern R. R.....	5s, 1921
Litchfield Division	3s, 1951
Louisville Division	31½s, 1953
Purchased Lines	31½s, 1952
Refunding Mortgage	4s, 1955
St. Louis Division.....	3s and 31½s, 1951
Springfield Division	31½s, 1951
Omaha Division	3s, 1951
Western Lines	4s, 1951

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY.

General Mortgage	31½s, 1997
Kalamazoo & White Pigeon R. R.First	5s, 1940

LEHIGH VALLEY SYSTEM.

Annuity Perpetual Consolidated.....	4½s and 6s,
Consolidated	4½s and 6s, 1923
First Mortgage	4s, 1948
Easton & Amboy (Guar.).....First	5s, 1920

LOUISVILLE & NASHVILLE SYSTEM.

First Mortgage	First	5s, 1937
General Mortgage		6s, 1930
Unified Mortgage		4s, 1940
Evansville, Hen. & Nashv. Div...First		6s, 1919
Mobile & Montgomery Ry.....	“	41½s, 1945
Nashv., Flor. & Sheff. Ry. (Guar.).	“	5s, 1937
New Orleans & Mobile Div.....	“	6s, 1930
Pensacola Division	“	6s, 1920
Pensacola & Atlantic (Guar.)....	“	6s, 1921
Paducah & Memphis Division....	“	4s, 1946
Southeast & St. Louis Div.....	“	6s, 1921
Trust	“	5s, 1931
Louisville, Cin. & Lexington.....General		41½s, 1931
Louis. & Nash. T'l Co. (Guar.)..First		4s, 1952
So. & No. Alabama R. R. (Guar.).Consolidated		5s, 1936

MICHIGAN CENTRAL SYSTEM.

Detroit & Bay City.....	First	.....5s,	1931
First Mortgage .....	"	.....3½s,	1952
Joliet & No. Indiana.....	"	.....4s,	1957
Jackson, Lansing & Saginaw.....	"	.....3½s,	1951
Kalamazoo & South Haven.....	"	.....5s,	1939
Michigan Air Line.....	"	.....4s,	1940

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE SYSTEM

First Consolidated	4s, 1938
Minn. & Pacific Ry.....First	4s, 1936
Minn., Sault Ste. Marie & At. Ry. “	4s, 1926

MOBILE & OHIO SYSTEM.

First Mortgage6s,	1927
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NASHVILLE, CHATTANOOGA & ST. LOUIS SYSTEM.

Consolidated Mortgage5s,	1928
Centreville Branch	First	6s, 1923
Fayette & McMinnville Branch..	“	6s, 1917
Jasper Branch Extension.....	“	6s, 1923
Lebanon Branch	“	6s, 1917
Memphis Union Sta. Co. (Guar.).	“	5s, 1959
Tracy City Branch.....	“	6s, 1917

NEW YORK CENTRAL SYSTEM.

First Mortgage	31½s,	1997
Refunding and Improvement.....	41½s,	2013
Beech Creek R. R. (Guar.).....First	4s,	1936
Beech Creek Exten. R. R. (Guar.). “	31½s,	1951
“ “ “ “ “ Consolidated	4s,	1955
Carthage, Water. & Sack. H. R. R.First	5s,	1931
Carthage & Adirondack Ry..... “	4s,	1981
Gouverneur & Oswegatchie R. R. “	5s,	1942
Little Falls & Dolgeville..... “	3s,	1932
Mohawk & Malone Ry..... “	4s,	1991

Mohawk & Malone Ry.....	Consolidated	....	3½s,	2002
New York & Putnam R. R.....	"	.....	4s,	1993
New York & Northern Ry.....	First	.....	5s,	1927
New Jersey June. R. R. (Guar.).	"	.....	4s,	1986
Norwood & Montreal R. R.....	"	.....	5s,	1916
Oswego R. R. Bridge.....	"	.....	6s,	1915
Oswego & Rome R. R.....	"	.....	7s,	1915
Pine Creek Ry. (Guar.).....	"	.....	6s,	1932
Rome, Water. & Ogdens. R. R....	Cons'd	3½s, 4s, and 5s,		1922
" " " "	Terminal	.....	5s,	1918
Syracuse, Phoenix & Oswego....	First	.....	6s,	1915
Spytten D'vil & Pt. Morris R. R.	"	.....	3½s,	1959
West Shore R. R. (Guar.).....	"	.....	4s,	2361
Utica & Black River R. R.....	"	.....	4s,	1922

NORFOLK & WESTERN SYSTEM.

Consolidated Mortgage	4s,	1996
General Mortgage	6s,	1931
Columbus Con. & Terminal Co..	First	.....5s, 1922
New River Division.....	"	.....6s, 1932
Improvement and Exten. Mort.....	6s,	1934
Scioto Valley & New Eng. R. R..	First	.....4s, 1989

NORTHERN PACIFIC SYSTEM.

General Lien	3s,	2047
Prior Lien	4s,	1997
St. Paul & Northern Pacific Ry..	First	.....6s, 1923
St. Paul & Duluth R. R.....	Consolidated	....4s, 1968
" " "	First	.....5s, 1931
" " "	Second	.....5s, 1917
Duluth Short Line.....	First	.....5s, 1916
Wash. & Columbia River Ry....	"	.....4s, 1935

PENNSYLVANIA SYSTEM.

Consolidated Mortgage	5s,	1919
" "	4s,	1943
" "	4s,	1948

Consolidated Mortgage	3½s,	1945
Allegheny Valley Ry. General	4s,	1942
Belvidere Delaware R. R. (Guar.)..Consolidated	4s,	1925
“ “ “ “ “	4s,	1927
“ “ “ “ “	3½s,	1943
Cambria & Clearfield Ry.....General	4s,	1955
Clearfield & Jefferson Ry.....First	6s,	1927
Cleveland & Pittsburgh (Guar.)..General	3½s,	1948
“ “ “ “ “	3½s,	1950
“ “ “ “ “	3½s and 4½s,	1942
Connecting Ry. (Guar.)	4s,	1951
Dela. River & Bridge Co. (Guar.)..First	4s,	1936
Junction R. R.....General	3½s,	1930
New York Bay R. R. (Guar.)....First	4s,	1948
Pennsylvania & Northw'n R. R...General	5s,	1930
Philadelphia & Erie Ry..... “	4s, 5s, and 6s,	1920
Pittsburgh, Va. & Charleston Ry..First	4s,	1943
Phila., Balt. & Washington R. R.. “	4s,	1943
Phila., Wil. & Baltimore R. R.....	4s,	1917
“ “ “ “	4s,	1922
“ “ “ “	4s,	1926
“ “ “ “	4s,	1932
Pitts., Cin., Chic. & St. Louis....Consolidated	4½s,	1940
“ “ “ “ “	4½s,	1963
“ “ “ “ “	4½s,	1942
“ “ “ “ “	4s,	1945
“ “ “ “ “	4s,	1953
“ “ “ “ “	4s,	1957
“ “ “ “ “	4s,	1960
“ “ “ “ “	3½s,	1949
Chartier Ry. ....First	3½s,	1931
Chic., St. Louis & Pittsburgh..Consolidated	5s,	1932
Sunbury & Lewiston Ry.....First	4s,	1936
Sunbury, Haz. & Wilkes-Barre Ry. “	5s,	1928
Southwest Pennsylvania Ry. “	7s,	1917
United New Jer. R. R. & Canal Co.General	4s,	1948
“ “ “ “ “ “	4s,	1944
“ “ “ “ “ “	4s,	1929

United New Jer. R. R. & Canal Co. General	4s, 1923
“ “ “ “ “ “	3½s, 1951
West Chester R. R. First	5s, 1919
Western Pennsylvania R. R. Consolidated	4s, 1928

PITTSBURGH & LAKE ERIE SYSTEM.

Pittsburgh & Lake Erie R. R. First	6s, 1928
Pitts., McK. & Y. Ry. (Guar.) “	6s, 1932

READING SYSTEM.

Philadelphia & Reading R. R.	5s, 1933
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SOUTHERN PACIFIC SYSTEM.

Northern Ry. First	5s, 1938
Northern California Ry. “	5s, 1929
Southern Pacific Branch Ry. “	6s, 1937
Southern Pacific R. R. Consolidated	5s, 1937
“ “ “	Refunding 4s, 1955

UNION PACIFIC RAILROAD.

First Mortgage	4s, 1947
Refunding Mortgage	4s, 2008

VANDALIA RAILROAD.

Consolidated A	4s, 1955
Consolidated B	4s, 1957
Terre Haute & Indianapolis R. R. Consolidated	5s, 1925

Railroad bonds which are at present not legal under the general provisions of the law, but which are legal investments under Section 36.

ATCHISON, TOPEKA & SANTA FE SYSTEM.

California-Arizona Lines First and Ref'g.	4½s, 1962
Ashland Coal & Iron Ry. First	4s, 1925
Boston, Revere, B. & Lynn R. R. “	4½s, 1927
Bridgeton & Saco River R. R. “	4s, 1928

BUFFALO, ROCHESTER & PITTSBURGH SYSTEM.

Allegheny & Western Ry.....First	4s, 1998
Buffalo, Roch. & Pittsburgh Ry..General	5s, 1937
“ “ “ “ ..Consolidated	4½s, 1957
Clearfield & Mahoning Ry.....First	5s, 1943
Lincoln Park & Charlotte R. R.. “	5s, 1939
Rochester & Pittsburgh R. R.... “	6s, 1921
“ “ “ “Consolidated	6s, 1922
Cornwall & Lebanon R. R.....First	4s, 1921
Coudersport & Pt. Allegheny R. R.First	5s, 1916

CENTRAL RAILWAY OF NEW JERSEY SYSTEM.

New York & Long Branch R. R..General.....	4s and 5s, 1941
Wilkes-Barre & Scranton Ry....First	4½s, 1938

CHICAGO & NORTHWESTERN SYSTEM.

Collateral Trust	5s and 6s, 1929
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CONNECTICUT RAILWAY & LIGHTING COMPANY

First Refunding	4½s, 1951
Bridgeport Traction Co.....First	5s, 1923
Conn. Lighting & Power Co..... “	5s, 1939
Chicago & West. Indiana R. R....First	6s, 1932
Cumberland & Pennsylvania R. R.First	5s, 1921

DELAWARE & HUDSON SYSTEM.

Rensselaer & Saratoga R. R.....First	7s, 1921
Ticonderoga R. R..... “	6s, 1921

DELAWARE, LACKAWANNA & WESTERN SYSTEM.

Morris & Essex R. R.....Consolidated	7s, 1915
N. Y., Lacka. & Western Ry.....First	6s, 1921
Detroit & Toledo Shore Line R. R.First	4s, 1953
Elgin, Joliet & Eastern Ry.....First	5s, 1941

ERIE RAILROAD SYSTEM.

Cleveland & Mahoning Val. Ry..First	.....5s, 1938
Goshen & Deekertown R. R.....	“6s, 1928
Montgomery & Erie Ry.....	“5s, 1926
New Castle & Shenango Val. R. R.	“6s, 1917
Northern Ry. of New Jersey....	“6s, 1917
Sharon Ry. ....	.....4½s, 1919
Genesee & Wyoming R. R.....First	.....5s, 1929

HOCKING VALLEY RAILWAY COMPANY.

First Consolidated	.....4½s, 1999
Columbus & Hocking Val. R. R..First Ext.	.....4s, 1948
Columbus & Toledo R. R.....	“ “4s, 1955

ILLINOIS CENTRAL SYSTEM.

Chic., St. Louis & New Orleans..Consolidated5s, 1951
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LOUISVILLE & NASHVILLE.

Atlanta, Knoxville & Cin. Div...First4s, 1955
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LAKE SHORE & MICHIGAN SOUTHERN SYSTEM.

Kalamazoo, Allegan & G. R. R. R.First5s, 1938
Mahoning Coal R. R.....	“5s, 1934
McKeesport & Belle Vernon R. R.	“6s, 1918

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE SYSTEM.

Central Terminal Ry.....First	.....4s, 1941
Mobile & Ohio R. R.....First Extension	.....6s, 1927
Narragansett Pier R. R.....First4s, 1916

NEW YORK CENTRAL SYSTEM.

New York & Harlem R. R.....Refunding3½s, 2000
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NORTHERN PACIFIC SYSTEM.

St. Paul & Duluth Division.....4s, 1996
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PENNSYLVANIA SYSTEM.

Belvidere Delaware R. R.....	Consolidated4s, 1933
Camden & Burlington Co. R. R..	First4s, 1927
Delaware R. R.....	General	.....4½s, 1932
Elmira & Williamsport R. R.....	First	.....4s, 1950
Erie & Pittsburgh R. R.....	General	.....3½s, 1940
Little Miami R. R.....	"	.....4s, 1962
Massillon & Cleveland R. R.....	First	.....5s, 1920
N. Y., Phila. & Norfolk R. R....	"	.....4s, 1939
Ohio Connecting Ry.....	"	.....4s, 1943
Pitts., Youngstown & Ashta. R. R.	Consolidated	.....5s, 1927
" " " "	General	.....4s, 1948
Pitts., Wheeling & Kentucky R. R.	Consolidated	.....6s, 1934
Sham. Valley & Pottsville R. R...	First	.....3½s, 1931
West Jersey & Sea Shore R. R.		
Series A, B, C, D, E, and F.....		3½s and 4s, 1936
Raritan River R. R.....	First	.....5s, 1939

READING SYSTEM.

Delaware & Bound Brook R. R..	Consolidated	....3½s, 1955
East Pennsylvania R. R.....	First	.....4s, 1958
North Pennsylvania R. R.....	"	.....4s, 1936
Phila., Harrisburg & Pitts. R. R..	"	.....5s, 1925
Phila. & Reading R. R.....	Improvement	....4s, 1947
" " " "	Terminal	.....5s, 1941
Reading Belt R. R.....	First	.....4s, 1950
Sham., Sunbury & Lewiston R. R.	"5s, 1912

ST. LOUIS, IRON MOUNTAIN & SOUTHERN SYSTEM.

River & Gulf Div.....	First4s, 1933
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SOUTHERN PACIFIC SYSTEM.

San Francisco Terminal.....	4s, 1950
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TERMINAL RAILWAY ASSOCIATION OF ST. LOUIS.

Consolidated Mortgage	5s, 1944
First Mortgage	4½s, 1939

General Refunding Mortgage.....	4s, 1953
St. Louis Mer. Bridge Term. Ry..First	5s, 1930
St. Louis Merchants' Bridge Co.. “	6s, 1929

WESTERN MARYLAND SYSTEM.

Balt. & Cumberland Valley Exten.First	6s, 1931
Baltimore & Harrisburg Ry..... “	5s, 1936

Sixth. Equipment Trust Obligations as follows:

Savings Banks may invest not exceeding two per centum of their deposits and surplus therein.

BALTIMORE & OHIO RAILROAD.

Equipment Trust of 1912.....	4½s, serially to 1922
Equipment Trust of 1913.....	4½s, serially to 1923

CENTRAL RAILROAD OF NEW JERSEY.

Series D	4s, serially to 1915
Series E	4s, serially to 1916
Series F	4s, serially to 1917

ILLINOIS CENTRAL RAILROAD.

Series A	4½s, semi-annually to 1923
Series B	5s, semi-annually to 1923

LEHIGH VALLEY RAILROAD.

Series J	4½s, serially to 1917
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LOUISVILLE & NASHVILLE RAILROAD.

Series A	5s, semi-annually to 1923
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MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE.

Series A	5s, serially to 1917
Series B	4½s, serially to 1920
Series C	4½s, serially to 1921
Series D	4½s, serially to 1922

NEW YORK CENTRAL LINES.

Joint Equipment Trust.....	5s, serially, 1907 to 1922
“ “ “	4½s, serially, 1910 to 1925
“ “ “	4½s, serially, 1912 to 1927
“ “ “	4½s, serially, 1913 to 1928
B. & A. Equipment Trust.....	4½s, serially, 1913 to 1927

NEW YORK, NEW HAVEN & HARTFORD RAILROAD.

Equipment Trust of 1914.....	serially to 1929
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Seventh. Bonds of Street Railways in Connecticut.

Savings Banks may invest not exceeding two per centum of their deposits and surplus therein.

Bristol & Plainville Tramway Co. First	4½s, 1945
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Eighth. Bonds of Water Companies in Connecticut.

Savings Banks may invest not exceeding two per centum of their deposits and surplus therein.

Bridgeport Hydraulic Co.....First	4s, 1925
“ “ “	Notes
New Haven Water Co.....	Debentures
“ “ “ “	“
	4½s, 1962

Ninth. Bonds of Telephone Companies in Connecticut.

Savings Banks may invest not exceeding two per centum of their deposits and surplus therein.

So. New England Telep. Co.....First	5s, 1948
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Tenth. Bonds of Telephone Companies Outside of Connecticut.

Savings Banks may invest not exceeding two per centum of their deposits and surplus therein.

American Telep. & Teleg. Co....Collateral Trust....	4s, 1929
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MASSACHUSETTS.

PUBLIC FUNDS.

Public funds of the United States and of the following States:

California	Nebraska
Connecticut	New Hampshire
Delaware	New Jersey
District of Columbia	New York
Illinois	Ohio
Indiana	Oregon
Iowa	Pennsylvania
Maine	Rhode Island
Massachusetts	Vermont
Michigan	Washington
Minnesota	Wisconsin
Missouri	

Bonds or notes of the following counties, cities, towns and districts in New England:

MAINE.	Ellsworth
<i>Counties.</i>	Gardiner
Androscoggin	Hallowell
Aroostook	Lewiston
Kennebec	Portland
	Saco
<i>Cities.</i>	Westbrook
Augusta	
Bangor	<i>Towns.</i>
Belfast	Boothbay Harbor
Biddeford	Brunswick
Brewer	Caribou
Eastport	Dexter

Fairfield
Houlton
Kennebunk
Lisbon
Lubec
Old Orchard
Pittsfield
Rumford
Sanford
Yarmouth

Water Districts.

Augusta
Brunswick and
Topsham
Gardiner
Kennebec
Kittery *
Portland
Van Buren *

NEW HAMPSHIRE.*Counties.*

Belknap
Hillsborough
Merrimack
Rockingham

Cities.

Berlin
Concord
Dover
Franklin
Keene
Manchester

Nashua
Portsmouth
Rochester
Somersworth

Towns.

Ashland
Claremont
Derry
Gorham
Haverhill
Jaffrey
Lancaster
Milford
Newmarket
Northumberland
Peterborough
Plaistow
Raymond
Salem
Sunapee
Walpole
Wilton

Water District.

North Conway *

VERMONT.*Cities.*

Barre
Burlington
Montpelier
Rutland
St. Albans
Vergennes

* Less than 5,000 inhabitants within the district, therefore only bonds issued prior to June 8, 1908, are legal.

Towns.

Bennington
Brattleborough
Ludlow

MASSACHUSETTS.

Bonds or notes of
any county, city,
town or incor-
porated district†
of the Common-
wealth of Massa-
chusetts.

RHODE ISLAND.*Cities.*

Central Falls
Cranston
Newport
Providence
Woonsocket ‡

Towns.

Barrington
Burrillville
Bristol
Coventry
Cumberland
East Greenwich
East Providence ‡
Jamestown
Johnston §

Lincoln ‡

North Smithfield
South Kingstown
Tiverton
Warren
Warwick
Westerly

CONNECTICUT.*County.*

Fairfield

Cities.

Ansonia
Bridgeport
Bristol
Danbury
Derby
Hartford
Middletown
New Britain
New Haven
New London
Putnam
Rockville
Stamford
Waterbury
Willimantic

Towns.

Branford
Brooklyn
Canton

† The banking department has been unable to learn of any incorporated district in Massachusetts the net indebtedness of which is in excess of the limit prescribed by law.

‡ Net indebtedness, as defined by new law, in excess of legal limit, therefore only bonds issued prior to June 8, 1908, are legal.

§ Only those which have been assumed by the city of Providence.

East Hartford	Norwich
East Lyme	Plainfield
Ellington	Ridgefield
Enfield	Southington
Essex	South Windsor
Fairfield	Stafford
Glastonbury	Stamford
Greenwich	Thomaston
Hamden	Torrington
Litchfield	Wallingford
Madison	Watertown
Manchester	West Hartford
Meriden	Windham
Newtown	Windsor
Norfolk	Windsor Locks

Legally authorized bonds for municipal purposes, etc., of the following cities outside of New England:

Akron, O.	Dubuque, Ia.
Albany, N. Y.	Duluth, Minn.
Allentown, Pa.	Elmira, N. Y.
Altoona, Pa.	Erie, Pa.
Amsterdam, N. Y.	Evansville, Ind.
Auburn, N. Y.	Flint, Mich.
Baltimore, Md.	Ft. Wayne, Ind.
Bay City, Mich.	Gr'd Rapids, Mich.
Binghamton, N. Y.	Harrisburg, Pa.
Buffalo, N. Y.	Indianapolis, Ind.
Canton, O.	Jackson, Mich.
Cedar Rapids, Ia.	Jamestown, N. Y.
Chicago, Ill.	Jersey City, N. J.
Cleveland, O.	Johnstown, Pa.
Columbus, O.	Joplin, Mo.
Davenport, Ia.	Kalamazoo, Mich.
Dayton, O.	Kansas City, Mo.
Decatur, Ill.	La Crosse, Wis.
Des Moines, Ia.	Lancaster, Pa.
Detroit, Mich.	Lansing, Mich.

Lima, O.	St. Louis, Mo.
Los Angeles, Cal.	St. Paul, Minn.
Louisville, Ky.	San Francisco, Cal.
Milwaukee, Wis.	Seranton, Pa.
Minneapolis, Minn.	Seattle, Wash.
Newark, N. J.	Sioux City, Ia.
New Castle, Pa.	South Bend, Ind.
Niagara Falls, N. Y.	Spokane, Wash.
Oakland, Cal.	Springfield, Mo.
Omaha, Neb.	Springfield, O.
Oshkosh, Wis.	Superior, Wis.
Paterson, N. J.	Syracuse, N. Y.
Philadelphia, Pa.	Terre Haute, Ind.
Pittsburgh, Pa.	Toledo, O.
Portland, Ore.	Troy, N. Y.
Quincy, Ill.	Utica, N. Y.
Reading, Pa.	Wilkes-Barre, Pa.
Rochester, N. Y.	Williamsport, Pa.
Rockford, Ill.	York, Pa.
Saginaw, Mich.	Youngstown, O.
St. Joseph, Mo.	Zanesville, O.

RAILROAD BONDS.

Bangor & Aroostook System. †, ¶

<i>Bangor & Aroostook R. R.</i> †, ¶...First	.....5s, 1943
<i>Bangor & Aroostook R. R., Piscataquis Division</i> †, ¶	.....“ .....5s, 1943
<i>Bangor & Aroostook R. R., Van Buren Extension</i> †, ¶	.....“ .....5s, 1943
<i>Bangor & Aroostook R. R., Medford Extension</i> †, ¶	.....“ .....5s, 1937
<i>Aroostook Northern R. R.</i> †, ¶....	.....“ .....5s, 1947
<i>Northern Maine Seaport R. R.</i> †, ¶. R. R. and term.	first 5s, 1935

† Dividends paid for insufficient number of years, but legal under clause fourth.

¶ Amount paid in dividends less than one-third of amount paid in interest, but legal under clause fourth.

Boston & Maine System.

Boston & Maine R. R.	Plain	3½s, 1921
" " "	"	3½s, 1923
" " "	"	3½s, 1925
" " "	"	4s, 1926
" " "	"	4½s, 1929
" " "	"	4s, 1937
" " "	"	4s, 1942
" " "	"	4½s, 1944
" " "	"	3s, 1950
Ports., Gt. Falls & Conway R. R.	First	4½s, 1937
Boston & Lowell R. R.	Plain	4s, 1915
" " "	"	4s, 1916
" " "	"	4s, 1917
" " "	"	4s, 1918
" " "	"	3½s, 1919
" " "	"	3½s, 1921
" " "	"	3½s, 1923
" " "	"	3½s, 1925
" " "	"	4s, 1926
" " "	"	4s, 1927
" " "	"	4s, 1929
" " "	"	4s, 1932
" " "	"	4½s, 1933
Conn. & Passumpsic Rivers R. R.	First	4s, 1943
Concord & Montreal R. R.	Consolidated mort.	4s, 1920
Connecticut River R. R.	Plain	3½s, 1921
" " "	"	3½s, 1923
" " "	"	4s, 1943
Worcester, Nashua & Roch. R. R.	First	4s, 1930
" " " " "	"	4s, 1934
" " " " "	"	4s, 1935
Fitchburg R. R.	Plain	4½s, 1914
" " "	"	4s, 1915
" " "	"	4s, 1916
" " "	"	3½s, 1920
" " "	"	4s, 1920

Fitchburg R. R.	Plain	.....	31½s.	1921
“ “ .....	“	.....	4s.	1925
“ “ .....	“	.....	4s.	1927
“ “ .....	“	.....	4s.	1928
“ “ .....	“	.....	41½s.	1928
“ “ .....	“	.....	41½s.	1932
“ “ .....	“	.....	41½s.	1933
“ “ .....	“	.....	4s.	1937
Troy & Boston R. R.	First	.....	7s.	1924
Vermont & Massachusetts R. R.	Plain	.....	31½s.	1923
Sullivan County R. R.	First	.....	4s.	1924
Vermont Valley R. R. ....	“	.....	41½s.	1940

Maine Central System.

Maine Central R. R.	Collateral trust	...	5s.	1923
Penobscot Shore Line R. R.	First	.....	4s.	1920
Maine Shore Line R. R. ....	“	.....	6s.	1923
Belfast & Moosehead Lake R. R. ....	“	.....	4s.	1920
Dexter & Newport R. R. ....	“	.....	4s.	1917
Dexter & Piscataquis R. R. ....	“	.....	4s.	1929
European & North American Ry. ....	“	.....	4s.	1933
Upper Coos R. R.	Mortgage	.....	4s.	1930
“ “ “	Extension mort.	..	41½s.	1930
Washington County Ry.	First	.....	31½s.	1954
Portland & Rumford Falls Ry.	Consolidated	.....	4s.	1926
Portland & Ogdensburg R. R.	First	.....	41½s.	1928
Somerset Ry. ....	“	.....	5s.	1917
“ “	First refunding	....	4s.	1955

New York, New Haven & Hartford System.

N. Y., N. H. & Hartford R. R.	Debenture	.....	4s.	1914
“ “ “ “ .....	“	.....	4s.	1947
“ “ “ “ .....	“	.....	31½s.	1947
“ “ “ “ .....	“	.....	31½s.	1954
“ “ “ “ .....	“	.....	4s.	1955
“ “ “ “	Convertible deb.	..	31½s.	1956

N. Y., N. H. & Hartford R. R.,

Harlem River & Port Chester. First	4s,	1954
Housatonic R. R. Consolidated	5s,	1937
New York, Prov. & Boston R. R. General	4s,	1942
Boston & New York Air Line R. R. First	4s,	1955
Danbury & Norwalk R. R. Consolidated	$\left. \begin{matrix} 5s \\ 6s \end{matrix} \right\}$	1920
“ “ “	General	5s, 1925
“ “ “	Refunding	4s, 1955
Naugatuck R. R. First	4s,	1954
“ “	Debenture	3½s, 1930
New Haven & Derby R. R. Consolidated	5s,	1918
Providence & Springfield R. R. First	5s,	1922
Providence Terminal Co. “	4s,	1956
Boston & Providence R. R. Plain	4s,	1918
Holyoke & Westfield R. R. First	4¼s,	1951
New England R. R. Consolidated	$\left. \begin{matrix} 4s \\ 5s \end{matrix} \right\}$	1945

New York & New England R. R.,

<i>Boston Terminal</i> || || .....	First	4s, 1939
Norwich & Worcester R. R. Debenture	4s,	1927
Old Colony R. R. Plain	4s,	1924
“ “ “	“	4s, 1925
“ “ “	“	4s, 1938
“ “ “	“	3½s, 1932
Providence & Worcester R. R. First	4s,	1947

Atchison, Topeka & Santa Fe Railway System.

Atchison, Topeka & Santa Fe Ry. General mortgage ..	4s,	1995
Atchison, Topeka & Santa Fe Ry.		

Trans. Short Line. First	4s,	1958
Atchison, Topeka & Santa Fe Ry.		

East Oklahoma	“	4s, 1928
Chicago & St. Louis Ry.	“	6s, 1915
Chicago, Santa Fe & Cal. Ry.	“	5s, 1937
Hutchinson & Southern Ry.	“	5s, 1928
San. Fran. & San Joaquin Val. Ry. “	5s,	1940

|| || Legalized by special act of General Court.

Baltimore & Ohio System.

Baltimore & Ohio R. R.	Extension	4s,	1935
"	"	Prior lien	3½s, 1925
"	"	First mortgage	4s, 1948
"	"	Southwest. Div.	3½s, 1925
Ohio River R. R.	First	5s,	1936
West Virginia & Pittsburgh R. R.	"	{ 4s 5s }	1990

Central of New Jersey System.

Central R. R. of New Jersey	General	5s,	1987
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Chicago & Northwestern System.

Chic. & Northwestern Ry.....	General	$\left. \begin{matrix} 3\frac{1}{2}s \\ 4s \end{matrix} \right\}$	1987
“ “ “	S'k'g. fd.Consolidated	7s,	1915
“ “ “	.....Extension	4s,	1926
“ “ “	.....S'k'g. fd. mort....	$\left. \begin{matrix} 5s \\ 6s \end{matrix} \right\}$	1929
Cedar Rapids & Mo. River R. R..	Mortgage	7s,	1916
Northwestern Union Ry.....	First	7s,	1917
Mil., Lake Shore & Western Ry.	Consolidated	6s,	1921
Mil., Lake Shore & Western Ry., Marshfield Extension	First	5s,	1922
Mil., Lake Shore & Western Ry., Michigan Division	“	6s,	1924
Mil., Lake Shore & Western Ry., Ashland Division	“	6s,	1925
Mil., Lake Shore & Western Ry., Ext. and imp.....	Mortgage	5s,	1929
Wisconsin Northern Ry.	First	4s,	1931
Winona & St. Peter R. R.....	“	7s,	1916
Boyer Valley Ry.*.....	“	3½s,	1923
Minnesota & Iowa Ry.....	“	3½s,	1924
Southern Iowa Ry.*.....	“	3½s,	1925

* Secured on less than 100 miles of railroad, but legal.

Princeton & Northwestern Ry....First	.....	31½s,	1926
Peoria & Northhwestern Ry.*....	“	31½s,	1926
Mankato & New Ulm Ry.*.....	“	31½s,	1929
Fremont, Elkhorn & Mo. Val. R. R. Consolidated	.....	6s,	1933
Minnesota & S. Dakota Ry.*.....First	.....	31½s,	1935
Iowa, Minn. & Northwestern Ry..	“	31½s,	1935
Sioux City & Pacific R. R.....	“	31½s,	1936
Man., Green Bay & N. W. Ry....	“	31½s,	1941

Chicago, Burlington & Quincy System.

Chic., B. & Q. R. R.....General	.....	4s,	1958
“ “ “ “ Illinois Div...Mortgage	.....	$\left\{ \begin{array}{l} 31\frac{1}{2}s \\ 4s \end{array} \right\}$	1949
“ “ “ “ Iowa “ .. “	.....	$\left\{ \begin{array}{l} 4s \\ 5s \end{array} \right\}$	1919
“ “ “ “ Denver Ext.....	.....	4s,	1922
“ “ “ “ Nebraska “ ..Mortgage	.....	4s,	1927
Bur. & M. River R. R. in Nebraska. Consolidated	.....	6s,	1918
Republican Valley R. R.....Mortgage	.....	6s,	1919
Tarkio Valley R. R.....First	.....	7s,	1920
Nodaway Valley R. R.....	“	7s,	1920

Chicago, Milwaukee & St. Paul System.

Chic., Milwaukee & St. Paul Ry., General	.....	$\left\{ \begin{array}{l} 31\frac{1}{2}s \\ 4s \\ 41\frac{1}{2}s \end{array} \right\}$	1989
Chic., Milwaukee & St. Paul Ry., La Crosse & Davenport Div.. First	.....	5s,	1919
Chic., Milwaukee & St. Paul Ry., Dubuque Division	..... “ .....	6s,	1920
Chic., Milwaukee & St. Paul Ry., Wisconsin Valley Division	..... “ .....	6s,	1920
Chic., Milwaukee & St. Paul Ry., Chicago & Pac. Western Div..	..... “ .....	5s,	1921

* Secured on less than 100 miles of railroad, but legal.

Chic., Milwaukee & St. Paul Ry., Wisconsin & Minnesota Div..First	5s, 1921
Chic., Milwaukee & St. Paul Ry., Chicago & Lake Superior Div. “	5s, 1921
Chic., Milwaukee & St. Paul Ry., Chic. & Missouri River Div.. “	5s, 1926
Chic., Milwaukee & St. Paul Ry., Gen. & Ref. (not in report but probably legal)	4½s, 2014
Dakota & Great Southern Ry.... “	5s, 1916
Fargo & Southern Ry..... “	6s, 1924
Milwaukee & Northern R. R....Extension	4½s, 1934

Chicago, Rock Island & Pacific System.

Chic., Rock Island & Pac. R. R..Mortgage	6s, 1917
“ “ “ “ Ry....General	4s, 1988

Chicago, St. Paul, Minneapolis & Omaha System.

Chic., St. P., Minn. & Omaha Ry..Consolidated ...	$\left\{ \begin{array}{l} 3\frac{1}{2}s \\ 6s \end{array} \right\}$	1930
Chic., St. Paul & Minneapolis Ry..First	6s,	1918
North Wisconsin Ry..... “	6s,	1930
St. Paul & Sioux City R. R..... “	6s,	1919

Delaware & Hudson System.

Delaware & Hudson Co.....First refunding	4s,	1943
“ “ Canal Co. ...First	7s,	1917
Adirondack Ry. “	4½s,	1942
Schenectady & Duanesburg R. R.. “	6s,	1924
Albany & Susquehanna R. R....Convertible	3½s,	1946

Delaware, Lackawanna & Western System.

New York, Lack. & W. Ry.‡....First	6s,	1921
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‡ Not guaranteed by endorsement, but legal.

Great Northern System.

Great Northern Ry.....	First refunding ..	41/4s,	1961
Minneapolis Union Ry.....	First	$\left\{ \begin{array}{l} 5s \\ 6s \end{array} \right\}$	1922
St. Paul, Minn. & Manitoba Ry.	Consolidated ...	$\left\{ \begin{array}{l} 4s \\ 41/2s \\ 6s \end{array} \right\}$	1933
St. Paul, Minn. & Manitoba Ry.,	Montana extension	4s,	1937
St. Paul, Minn. & Manitoba Ry.,	Pacific extension	4s,	1940
Eastern Ry. of Minnesota, North-	ern Division	4s,	1948
Montana Central Ry.	First	$\left\{ \begin{array}{l} 5s \\ 6s \end{array} \right\}$	1937
Wilmar & Sioux Falls Ry.....	"	5s,	1938
Spokane Falls & Northern Ry....	"	6s,	1939

Illinois Central System.

Ill. Cent. R. R.....	Refunding mortgage	4s,	1955
" " "	Sterling Extended.....	4s,	1951
" " "	Gold Extended.....	31/2s,	1950
" " "	Sterling	3s,	1951
" " "	Gold	4s,	1951
" " "	"	31/2s,	1951
" " "	Gold Extended	31/2s,	1951
" " "	Springfield Div...First	31/2s,	1951
" " "	Kan. & S. W. R. R. "	5s,	1921
" " "	Cairo Bridge "	4s,	1950
" " "	St. Louis Division. "	$\left\{ \begin{array}{l} 3s \\ 31/2s \end{array} \right\}$	1951
" " "	Purchased Lines .. "	31/2s,	1952
" " "	Collateral Trust .. "	31/2s,	1950
" " "	Western Lines ‡ .. "	4s,	1951

‡ Bonds do not cover 75 per cent. of the railroad owned in fee at the date of the mortgage by the railroad corporation on the railroad of which the mortgage is a lien, but are legal.

Ill. Cent. R. R. <i>Louisville Div.</i> † ..	First	3½s, 1953
“ “ “ <i>Omaha Div.</i> ‡	“	3s, 1951
“ “ “ <i>Litchfield Div.</i> * ...	“	3s, 1951
“ “ “ <i>Collateral Trust</i> || .....	“ .....	4s, 1952

Lake Shore & Michigan Southern System.

Lake Shore & Mich. Southern Ry. First general	3½s, 1997
<i>Kal., Allegan. & Gr. Rapids R. R.</i> *First	5s, 1938
<i>Mahoning Coal R. R.</i> *	“
<i>Pitts., McKeesport & Y. R. R.</i> * ..	“
	6s, 1932

Louisville & Nashville System.

Louisville & Nashville R. R.	Unified	4s, 1940
“ “ “	General	6s, 1930
“ “ “	First	5s, 1937
“ “ “	Trust	5s, 1931
Evans., Henderson & Nash. Div. .	Sinking fund	6s, 1919
Louis., Cin. & Lexington Ry.	General	4½s, 1931
Southeast & St. Louis Division ..	.....	6s, 1921
Mobile & Montgomery .....	.....	4½s, 1945
New Orl. & Mobile Div., \$5,000,000.	First	6s, 1930
Nash., Florence & Sheffield Ry.	“	5s, 1937
Pensacola & Atlantic R. R.	“	6s, 1921

Michigan Central System.

Michigan Central R. R.	First	3½s, 1952
Mich. Cent.-Mich. Air Line R. R. .	“	4s, 1940
Mich. Cent.-Det. & Bay City R. R. .	“	5s, 1931
Mich.-Cent.-Jackson, Lansing & Saginaw R. R.	“	3½s, 1951

† Bonds do not cover 75 per cent. of the railroad owned in fee at the date of the mortgage by the railroad corporation on the railroad of which the mortgage is a lien, but are legal.

* Secured on less than 100 miles of railroad, but legal.

|| Railroad covered by one of the issues pledged as collateral is not operated by Illinois Central R. R.

<i>Mich. Cent.-Joliet & Northern Indiana R. R.*</i>	First	.....4s, 1957
<i>Mich.-Cent.-Kalamazoo & South Haven R. R.*</i>	“5s, 1939

Nashville, Chattanooga & St. Louis System.

Nashville, Chat. & St. Louis Ry.	First consolidated	..5s, 1928
Nashville, Chat. & St. Louis Ry., Tracy City Branch.....	First	.....6s, 1917
Nashville, Chat. & St. Louis Ry., Fayette & McMinnville Branch.	“	.....6s, 1917
Nashville, Chat. & St. Louis Ry., Lebanon Branch .....	“	.....6s, 1917
Nashville, Chat. & St. Louis Ry., Jasper Branch Extension....	“	.....6s, 1923
Nashville, Chat. & St. Louis Ry., Centreville Branch .....	“	.....6s, 1923

New York Central System.

N. Y. Cent. & Hudson River R. R.	Mortgage	3½s, 1997
Beech Creek R. R.....	First	.....4s, 1936
Mohawk & Malone Ry.....	“	.....4s, 1991
New York & Harlem R. R. §....	Mortgage	3½s, 2000
Rome, Watertown & Ogdensburg R. R. §	Consolidated	<div style="display: inline-block; vertical-align: middle;"> <div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 5px;">{</div> <div style="text-align: center;"> 5s 4s 3½s </div> </div> </div>
<i>Rome, Watertown & Ogdensburg Terminal R. R. §</i>	First	.....5s, 1918
<i>Norwood & Montreal R. R. §.....</i>	“	.....5s, 1916
<i>Oswego R. R. Bridge, §.....</i>	“	.....6s, 1915
<i>Syracuse, Phoenix & Oswego R. R. §</i>	“	.....6s, 1915
<i>Carthage, Watertown & Sacket's Harbor R. R. §.....</i>	Consolidated	.....5s, 1931
<i>Utica & Black River R. R. §.....</i>	First	.....4s, 1922

* Secured on less than 100 miles of railroad, but legal.

§ Not guaranteed by endorsement, but legal.

Boston & Albany R. R.	Plain	3½s, 1952
" " "	"	3½s, 1951
" " "	"	4s, 1933
" " "	"	4s, 1934
" " "	"	4s, 1935
" " "	"	4½s, 1937
" " "	"	5s, 1938
" " "	"	5s, 1963

Northern Pacific System.

Northern Pacific Ry.	Prior lien	4s, 1997
St. Paul & Northern Pac. Ry.		6s, 1923
St. Paul & Duluth R. R.	First	5s, 1931
Washington & Columbia River Ry.	"	4s, 1935

Pennsylvania System.

Pennsylvania R. R.	Consolidated	5s, 1919
" " "	"	4s, 1943
" " "	"	3½s, 1945
" " "	"	4s, 1948
Sunbury & Lewiston Ry.*	First	4s, 1936
Sunbury, Hazleton & Wilkesbarre Ry.*	"	5s, 1928
West Chester R. R.*	"	5s, 1919
Western Pennsylvania R. R.	Consolidated	4s, 1928
Pitts., Va. & Charleston Ry.*	First	4s, 1943
South West Pennsylvania R. R.	"	7s, 1917
Junction R. R.*	General	3½s, 1930
Philadelphia & Erie R. R.	"	<div style="display: inline-block; vertical-align: middle;"> <div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;">6s</div> <div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;">5s</div> <div style="border-left: 1px solid black; border-right: 1px solid black; padding: 0 5px;">4s</div> </div> 1920
United N. J. R. R. & Canal Co.	General	4s, 1923
" " " " " "	"	4s, 1929
" " " " " "	"	4s, 1944
" " " " " "	"	4s, 1948

* Secured on less than 100 miles of railroad, but legal.

United N. J. R. R. & Canal Co.	General	.....	31½s,	1951
<i>Delaware Riv. R. R. & Bridge Co.*</i>	First	.....	4s,	1936
<i>Erie & Pittsburgh R. R.*</i>	General	.....	31½s,	1940
Cleveland & Pittsburgh R. R.	“	.....	{ 41½s 31½s }	1942
“	“	“		
“	“	“	.....	31½s, 1948
“	“	“	.....	31½s, 1950
Allegheny Valley Ry.	General	.....	4s,	1942
Cambria & Clearfield R. R.	First	.....	5s,	1941

Miscellaneous.

<i>Boston Terminal Co. ||</i>	First	.....	31½s,	1947
<i>Boston, Rev. Beach & Lynn R. R.†</i>	“	.....	41½s,	1927
Bridgton & Saco River R. R.	Consolidated	.....	4s,	1928
New London Northern R. R.	First	.....	4s,	1940
<i>Narragansett Pier R. R.†</i>	“	.....	4s,	1916
Portland Terminal Co.	First	.....	4s,	1961

STREET RAILWAY BONDS.

Bay State Street Railway Company.

Boston, Milton & Brockton Street				
Ry. Co.	First mortgage	....	5s,	1919
Boston & Northern Street Ry. Co.	Refund'g first mort.	4s,		1954
Braintree Street Ry. Co.	First mortgage	....	6s,	1914
Braintree & Weymouth St. Ry. Co.	“	“	....	5s, 1917
Bridgewater, Whitman & Rockland				
Street Ry. Co.	“	“	....	5s, 1917
Brockton, Bridgewater & Taunton				
Street Ry. Co.	“	“	....	5s, 1917
Brockton Street Ry. Co.	“	“	....	5s, 1924
Brockton & East Bridgewater				
Street Ry. Co.	“	“	....	5s, 1918

* Secured on less than 100 miles of railroad, but legal.

† Dividends paid for insufficient number of years, but legal.

|| Legalized by special act of General Court.

Dighton, Somerset & Swansea			
Street Ry. Co.....	First mortgage	....5s,	1915
Georgetown, Rowley & Ipswich			
Street Ry. Co.....	“ “	....5s,	1920
Gloucester, Essex & Beverly Street			
Ry. Co. ....	“ “	....5s.	1916
Haverhill, Georgetown & Danvers			
Street Ry. Co. ....	“ “	....5s.	1919
Lowell, Lawrence & Haverhill			
Street Ry. Co. ....	“ “	....5s.	1923
Lynn & Boston Railroad Co.....	“ “	....5s.	1924
Mystie Valley Street Ry. Co.....	“ “	....5s.	1919
New Bedford, Middleboro & Brook-			
ton Street Ry. Co.....	“ “	....5s.	1920
Norfolk Central Street Ry. Co....	“ “	....5s.	1918
Norfolk Suburban Street Ry. Co..	“ “	....5s.	1914
Old Colony Street Ry. Co.....	Refund'g first mort.	4s.	1954
People's Street Ry. Co.....	First mortgage	....5s.	1928
Providence & Taunton St. Ry. Co.	“ “	....5s.	1918
Rockland & Abington St. Ry. Co..	“ “	....6s.	1915
South Shore & Boston St. Ry. Co.	“ “	....5s.	1919
Taunton Street Ry. Co.....	Debenture	.....5s.	1914
Taunton & Brockton St. Ry. Co..	First mortgage	....5s.	1917
Wakefield & Stoneham St. Ry. Co.	“ “	....5s.	1915
West Roxbury & Roslindale St.			
Ry. Co. ....	“ “	....5s.	1916

Boston & Revere Electric Street Railway Company.

Boston & Revere Electric Street			
Ry. Co.	Refund'g first mort.	5s.	1928

East Middlesex Street Railway Company.

East Middlesex Street Ry. Co....	Plain	.....5s.	1918
“ “ “ “ “ “	“	.....4s.	1922

Fitchburg & Leominster Street Railway Company.

Fitchburg & Leominster St. Ry. Co.	First mortgage5s,	1917
“ “ “ “ “	Consol. mort.	....4½s,	1921
Leominster, Shirley & Ayer Street			
Ry. Co.	First mortgage	....5s,	1921

Holyoke Street Railway Company.

Holyoke Street Ry. Co.	Debenture5s,	1915
“ “ “ “ “	“	....5s,	1920
“ “ “ “ “	“	....5s,	1923

Nahant & Lynn Street Railway Company.

Nahant & Lynn Street Ry. Co.	First mortgage5s,	1925
“ “ “ “ “	“	....5s,	1929

Springfield Street Railway Company.

Springfield Street Ry. Co.	First mortgage4s,	1923
Springfield & Eastern St. Ry. Co.	“	....5s,	1922
Western Massachusetts St. Ry. Co.	“	....5s,	1926
Woronoco Street Ry. Co.	“	....5s,	1920

West End Street Railway Company.

West End Street Ry. Co.	Debenture4½s,	1914
“ “ “ “ “	“	....4s,	1915
“ “ “ “ “	“	....4s,	1916
“ “ “ “ “	“	....4s,	1917
“ “ “ “ “	“	....4½s,	1923
“ “ “ “ “	“	....4½s,	1930
“ “ “ “ “	“	....4s,	1932
“ “ “ “ “	“	....5s,	1932

Worcester Consolidated Street Railway Company.

Marlborough & Westborough St.		
Ry. Co.	Gold mortgage	5s, 1921
Uxbridge & Blackstone St. Ry. Co.	First mortgage	5s, 1923
" " " " "	Debenture	5s, 1927
Worcester Consolidated St. Ry. Co.	"	4½s, 1920
" " " " "	"	5s, 1927
" " " " "	Ref'd'g first mort.	4½s, 1930
Worcester & Blackstone Valley		
Street Ry. Co.	First mortgage ..	4½s, 1926
Worcester & Clinton Street Ry. Co.	" "	....5s, 1919
Worcester & Holden.....	" "	....5s, 1923
Worcester & Marlborough Street		
Ry. Co. ....	" "	....5s, 1917
Worcester & Southbridge Street		
Ry. Co.	" "	..4½s, 1922
Worcester & Southbridge Street		
Ry. Co.	" "	..4½s, 1925

TELEPHONE COMPANY BONDS.

American Telephone & Telegraph		
Co.	Collateral trust	4s, 1929

NEW YORK.

GOVERNMENT BONDS.

United States .....2% Bonds	Panama .....2% Bonds
United States .....3% Bonds	Panama .....3% Bonds
United States .....4% Bonds	Dis. of Columbia.3.65% Bonds

STATE BONDS.

Arizona	Nevada
California	New Hampshire
Connecticut	New Mexico
Delaware	New York
Florida	North Dakota
Idaho	Oklahoma
Indiana	Pennsylvania
Kansas	Rhode Island
Kentucky	South Dakota
Louisiana	Tennessee
Maine	Texas
Maryland	Utah
Massachusetts	Vermont
Minnesota	Washington
Missouri	Wisconsin
Montana	Wyoming.

NEW YORK MUNICIPAL BONDS.

All bonds legally issued by any City, County, Town, Village, School District, Poor District or Union Free School District, in New York State.

CITY BONDS.

Akron, Ohio	Allentown, Pa.
Allegheny, Pa.	Altoona, Pa.

Atlantic City, N. J.
Baltimore, Md.
Bay City, Mich.
Bayonne, N. J.
Boston, Mass.
Bridgeport, Conn.
Brockton, Mass.
Cambridge, Mass.
Camden, N. J.
Canton, Ohio
Chicago, Ill.
Cincinnati, Ohio
Cleveland, Ohio
Columbus, Ohio
Dallas, Texas
Dayton, Ohio
Detroit, Mich.
Erie, Pa.
Fall River, Mass.
Fort Wayne, Ind.
Grand Rapids, Mich.
Harrisburg, Pa.
Hartford, Conn.
Hoboken, N. J.
Holyoke, Mass.
Indianapolis, Ind.
Jacksonville, Fla.
Jersey City, N. J.
Kansas City, Kan.
Kansas City, Mo.
Lancaster, Pa.
Lawrence, Mass.
Los Angeles, Cal.
Louisville, Ky.
Lowell, Mass.
Lynn, Mass.
Manchester, N. H.

Milwaukee, Wis.
Minneapolis, Minn.
Newark, N. J.
New Bedford, Mass.
New Haven, Conn.
Oakland, Cal.
Passaic, N. J.
Paterson, N. J.
Pawtucket, R. I.
Peoria, Ill.
Philadelphia, Pa.
Pittsburgh, Pa.
Portland, Me.
Providence, R. I.
Reading, Pa.
Rockford, Ill.
Saginaw, Mich.
San Antonio, Texas
San Francisco, Cal.
Scranton, Pa.
Somerville, Mass.
South Bend, Ind.
Springfield, Ill.
Springfield, Mass.
Springfield, Ohio
St. Louis, Mo.
St. Paul, Minn.
Tacoma, Wash.
Terre Haute, Ind.
Toledo, Ohio
Trenton, N. J.
Waterbury, Conn.
Wilkes-Barre, Pa.
Wilmington, Del.
Worcester, Mass.
Wichita, Kans.
Youngstown, Ohio

RAILROAD BONDS.

Adirondack Ry., 1st.....	41½s,	1942
Albany & Susque., 1st Mtge. Conv.....	31½s,	1946
Allegheny Vy. R. R. Gen.....	4s,	1942
Atch., Top. & Santa Fe Gen.....	4s,	1995
Baltimore & Ohio R. R. Co. Extend.....	4s,	1935
Bay City & Battle Creek R. R. 1st.....	3s,	1989
Belvidere Delaware Cons. Mtge.....	4s,	1925
Belvidere Delaware Cons. Mtge.....	4s,	1927
Belvidere Delaware Cons. Mtge.....	31½s,	1943
Boyer Valley R. R. 1st.....	31½s,	1923
Buffalo Creek R. R. Co. Cons. Mtge.....	5s,	1941
Buffalo, Roch. & Pitts. Ry. Gen. Mtge.....	5s,	1937
Buffalo, Roch. & Pitts. Ry. Cons. Mtge.....	41½s,	1957
Burlington & Mo. River Cons. Mtge.....	6s,	1918
Cairo R. R. Co. 1st Mtge.....	6s,	1925
Carth., Water., & Sack Harb. Cons.....	5s,	1931
Cedar Rapids & Mo. R. 1st Mtge.....	7s,	1916
Central Pacific Ry. 1st Ref.....	4s,	1949
Central R. R. of New Jersey.....	5s,	1987
Chartiers Ry. 1st Mtge.....	31½s,	1931
Chic. & Lake Sup. 1st Mtge.....	5s,	1921
Chic. & Mo. River 1st Mtge.....	5s,	1926
Chic. & N. W. Cons. Mtge.....	7s,	1915
Chic. & N. W. Genl. Mtge.....	31½s,	1987
Chic. & N. W. Genl. Mtge.....	4s,	1987
Chic. & Pac. Western 1st.....	5s,	1921
Chic., Burlington & Quincy, Genl. Mtge.....	4s,	1958
Chic., Burlington & Quincy, Den. Ext.....	4s,	1922
Chic., Burlington & Quincy, Ill. Div.....	31½s,	1949
Chic., Burlington & Quincy, Ill. Div.....	4s,	1949
Chic., Burlington & Quincy, Iowa Div.....	4s,	1919
Chic., Burlington & Quincy, Iowa Div.....	5s,	1919
Chic., Burlington & Quincy, Neb. Ext.....	4s,	1927
Chic., Mil. & St. P. Genl. (due May).....	31½s,	1989
Chic., Mil. & St. P. Genl. (due May).....	4s,	1989
Chic., Mil. & St. P. Genl. (due May).....	41½s,	1989

Chic., Mil. & St. P. Gen. & Ref.....	4½s,	2014
Chic., Mil. & St. P. Deb.....	4s,	1934
Chic., Mil. & St. P. Conv.....	4½s,	1932
Chic., Mil. & St. P. European Loan.....	4s,	1925
Chic., Mil. & St. P., Dubuque Div. 1st.....	6s,	1920
Chic., Rock Island & Pac. 1st Mtge.....	6s,	1917
Chic., Rock Island & Pac. Genl. Mtge.....	4s,	1988
Chic., Rock Island & Pac. 1st & Ref.....	4s,	1934
Chic., St. P., Minn & O. Ry. Cons. Mtge.....	3½s,	1930
Chic., St. P., Minn & O. Ry. Cons. Mtge.....	6s,	1930
Chic., St. Paul & Minn. 1st.....	6s,	1918
Chic. & St. Louis 1st.....	6s,	1915
Chic., St. Louis & Pitts. Cons.....	5s,	1932
Chic., Santa Fe & Cal. 1st Mtge.....	5s,	1937
Cleveland & Pitts. Genl. Mtge.....	4½s,	1942
Cleveland & Pitts. Genl. Mtge.....	3½s,	1942
Cleve. & Pitts. Genl. Mtge.....	3½s,	1948
Cleve. & Pitts. Genl. Mtge.....	3½s,	1950
Col., Conn. & Term. 1st Mtge.....	5s,	1922
Dak. & Gt. So. 1st Mtge.....	5s,	1916
Danbury & Norwalk Cons. Mtge.....	5s,	1920
Danbury & Norwalk Cons. Mtge.....	6s,	1920
Del. & Hud. Canal Co., Penn. Div. 1st.....	7s,	1917
Del. & Hud. 1st & Ref. Mtge.....	4s,	1943
Del. R. R. & Bridge Co. 1st Mtge.....	4s,	1936
Dexter & Newport R. R. 1st Mtge.....	4s,	1917
Dexter & Piscataquis 1st Mtge.....	4s,	1929
East R. R. of Minn. No. Div. 1st Mtge.....	4s,	1948
Erie & Pittsburgh Genl. Mtge.....	3½s,	1940
European & North Amer. Ry. 1st.....	4s,	1933
Evans, Henderson & Nashville.....	6s,	1919
Fargo & Southern 1st Mtge.....	6s,	1924
Fayette & McMinville Br. 1st.....	6s,	1917
Fonda, Johnstown & Gloversville Cons.....	6s,	1921
Fonda, Johnstown & Gloversville Cons. Ref.....	4½s,	1947
Fonda, Johnstown & Gloversville Genl. Ref.....	4s,	1950
Fonda, Johnstown & Gloversville Genl. Ref.....	4½s,	1952
Fremont, Elk & Mo. Val. Cons.....	6s,	1933

Genesee & Wy. Val. R. R. Co. 1st Mtge.....	5s,	1929
Gt. Nor. Ry. Co. 1st Mtge. & Ref.....	41¼s,	1961
Greenwich & Johnsonville 1st Mtge.....	4s,	1924
Harrisburg, Ports. & Mt. J. & Lan. 1st.....	4s,	1913
Housatonic R. R. Cons. Mtge.....	5s,	1937
Illinois Central R. R. Co., Cairo Bridge.....	4s,	1950
Illinois Central R. R. Co., 1st Gold.....	31½s,	1951
Illinois Central R. R. Co., 1st Gold.....	4s,	1951
Illinois Central R. R. Co., 1st Sterling Ext.....	4s,	1951
Illinois Central R. R. Co., 1st Sterling Ext.....	31½s,	1950
Illinois Central R. R. Co., 1st Sterling.....	3s,	1951
Illinois Central R. R. Co., 1st Ext. Gold.....	31½s,	1951
Illinois Central R. R. Co., Litchfield Div.....	3s,	1951
Illinois Central R. R., Purchased Line 1st.....	31½s,	1952
Illinois Central R. R., Refunding Mtge.....	4s,	1955
Illinois Central R. R., Springfield Div. 1st.....	31½s,	1951
Illinois Central R. R., St. L. Div. & T. 1st.....	3s,	1951
Illinois Central R. R., St. L. Div. & T. 1st.....	31½s,	1951
Illinois Central R. R. Co., Sterling Coll. Tr.....	31½s,	1950
Iowa, Minn. & No. W. 1st Mtge.....	31½s,	1935
June. R. R. Genl. Mtge.....	31½s,	1930
Kalamazoo & White Pigeon 1st Mtge.....	5s,	1940
Kankakee & So. W.....	5s,	1921
La Crosse & Davenport 1st Mtge.....	5s,	1919
Lake Shore & Mich. So. Ry. 1st Genl.....	31½s,	1997
Lehigh Valley R. R. 1st Mtge.....	4s,	1948
Lincoln Park & Charlotte 1st Mtge.....	5s,	1939
Louisville & Nashville R. R. Co. 1st Mtge.....	5s,	1937
Louisville & Nashville R. R. Genl.....	6s,	1930
Louisville & Nashville R. R. Co. Unif.....	4s,	1940
Louisville, Cin. & Lex. Genl. Mtge.....	41½s,	1931
Mahoning Coal R. R. 1st Mtge.....	5s,	1934
Maine Shore Line 1st Mtge.....	6s,	1923
Man. Ry. Co. Cons. Mtge.....	4s,	1990
Man. Ry. Co. Deb.....	5s,	1916
Mankato & New Ulm 1st Mtge.....	31½s,	1929
Mich. Central R. R. Co. 1st Mtge.....	31½s,	1952
Mil. & No. 1st Mtge. Ext.....	41½s,	1913

Mil. & No. Cons. Mtge.....	6s.	1913
Milwaukee, Lake Shore & West. Ext. & Imp.....	5s.	1929
Milwaukee, Lake Shore & West. 1st Mtge.....	6s.	1921
Milwaukee, Lake Shore & W., Ash. Div. 1st Mtge.....	6s.	1925
Milwaukee, L. S. & W., Marshfield Ext. 1st Mtge.....	5s.	1922
Milwaukee, L. S. & West., Mich. Div. 1st Mtge.....	6s.	1924
Minn. & Iowa 1st Mtge.....	3½s.	1924
Minn. & So. Dak. 1st Mtge.....	3½s.	1935
Minn., St. Paul & Sault Ste. Marie Ry. Co. 1st Cons.....	4s.	1938
Minn., Sault Ste. Marie & Atl. Ry. Co. 1st Mtge.....	4s.	1926
Minneapolis & Pacific Ry. Co. 1st Mtge.....	4s.	1936
Minneapolis Union 1st Mtge.....	5s.	1922
Minneapolis Union 1st Mtge.....	6s.	1922
Mobile & Ohio R. R. Co. 1st Mtge.....	6s.	1927
Mohawk & Malone 1st Mtge.....	4s.	1991
Mohawk & Malone Cons. Mtge.....	3½s.	2002
Montana Central Ry. 1st Mtge.....	5s.	1937
Montana Central Ry. 1st Mtge.....	6s.	1937
Montgomery & Erie R. R. 1st Mtge.....	5s.	1926
Morris & Essex Cons. Mtge.....	7s.	1915
Morris & Essex 1st & Ref.....	3½s.	2000
Nash., Chatt. & St. L. Ry. 1st Mtge.....	7s.	1913
Nash., Chatt. & St. L. Ry. Co. 1st Cons.....	5s.	1928
Nash., Chatt. & St. L. Ry. Cen. Br. 1st.....	6s.	1923
Nash., C. & St. L. Ry., Jas. Br. Ext. 1st.....	6s.	1923
Nash., C. & St. L. Ry., Lebanon Br. 1st.....	6s.	1917
Nash., C. & St. Ry., Tracy City Br. 1st.....	6s.	1917
Naugatuck R. R. 1st Mtge.....	4s.	1954
New England R. R. Cons. Mtge.....	4s.	1945
New England R. R. Cons. Mtge.....	5s.	1945
New Haven & Derby Cons. Mtge.....	5s.	1918
New Haven & Northampton Ref. Cons.....	4s.	1956
New River R. R.....	6s.	1932
New York & Harlem Ref.....	3½s.	2000
New York, C. & H. R. R. Co. 1st Ref.....	3½s.	1997
New York Cent. & H. River R. R. Co. Ref. & Imp....	4½s.	2013
New York, Chic. & St. L. R. R. 1st.....	4s.	1937
New York, Laek. & West. 1st Mtge.....	6s.	1921

New York, Prov. & Boston Genl. Mtge.....	4s,	1942
Nodaway Valley 1st Mtge.....	7s,	1920
Norfolk & West. Ry. Co. Cons.....	4s,	1996
Norfolk & West. Ry. Co. Genl. Mtge.....	6s,	1931
Norfolk & West. Ry. Co. Imp. & Ex.....	6s,	1934
Northern California Ry. 1st.....	5s,	1929
Northern Pac. Ry. Prior Lien.....	4s,	1997
Northern Ry. 1st.....	5s,	1938
North West, Union 1st Mtge. (due June).....	7s,	1917
North Wis. 1st Mtge.....	6s,	1930
Norwood & Montreal 1st Mtge.....	5s,	1916
Oswego R. R. Bridge 1st.....	6s,	1915
Pawtucket Valley 1st Mtge.....	4s,	1925
Penn. R. R. Cons. Mtge.....	5s,	1919
Penn. R. R. Cons. Mtge.....	4s,	1943
Penn. R. R. Cons. Mtge.....	3½s,	1945
Penn. R. R. Cons. Mtge.....	4s,	1948
Penn. R. R. Real Estate 1st Mtge.....	4s,	1923
Penobscot Shore Line 1st.....	4s,	1920
Peoria & No. West. 1st Mtge.....	3½s,	1926
Phila. & Reading 4th (now 1st).....	5s,	1933
Phila. & Erie Gen. Mtge.....	6s,	1920
Phila. & Erie Genl. Mtge. (due July).....	5s,	1920
Phila. & Erie Genl. Mtge. (due July).....	4s,	1920
Phila., Balto. & Wash. 1st Mtge.....	4s,	1943
Phila., Wilmington & Baltimore Deb.....	4s,	1917
Phila., Wilmington & Baltimore Deb.....	4s,	1922
Phila., Wilmington & Baltimore Deb.....	4s,	1926
Phila., Wilmington & Baltimore Deb.....	4s,	1932
Pitts. & Lake Erie R. R. 1st.....	6s,	1928
Pitts., Chartiers & Young. Gen. Mtge.....	4s,	1932
Pitts., C., C. & St. L. Ry. Cons. Ser. A.....	4½s,	1940
Pitts., C., C. & St. L. Ry. Cons. Ser. B.....	4½s,	1942
Pitts., C., C. & St. L. Ry. Cons. Ser. C.....	4½s,	1942
Pitts., C., C. & St. L. Ry. Cons. Ser. D.....	4s,	1945
Pitts., C., C. & St. L. Ry. Cons. Ser. E.....	3½s,	1949
Pitts., C., C. & St. L. Ry. Cons. Ser. F.....	4s,	1953
Pitts., C., C. & St. L. Ry. Cons. Ser. G.....	4s,	1957

Pitts., C. & St. L. Ry. Cons. Ser. H.....	4s, 1960
Pitts., Va. & Charlestown 1st Mtge.....	4s, 1943
Portsmouth, Great Falls & Conway.....	4½s, 1937
Princeton & No. W. 1st Mtge.....	3½s, 1926
Prov. & Springfield 1st Mtge.....	5s, 1922
Rensselaer & Saratoga Cons. Mtge.....	7s, 1921
Republican Valley 1st Mtge.....	6s, 1919
Rochester & Pitts. 1st Mtge.....	6s, 1921
Roch. & Pitts. Cons. Mtge.....	6s, 1922
Rome, W. & O. Cons. (due July).....	3½s, 1922
Rome, W. & O. Cons. (due July).....	4s, 1922
Rome, W. & O. Cons. (due July).....	5s, 1922
Rome, Watertown & Ogdensburg Term. 1st.....	5s, 1918
St. Paul & No. Pac. Ry. Genl. Mtge.....	6s, 1923
St. Paul & Sioux City 1st Mtge.....	6s, 1919
St. Paul, Minn. & Man. Ry. Cons.....	4s, 1933
St. Paul, Minn. & Man. Ry. Cons.....	4½s, 1933
St. Paul, Minn. & Man. Ry. Cons.....	6s, 1933
St. Paul, Minn. & Man., Montana Ext.....	4s, 1937
St. Paul, Minn. & Man. Pac. Ext.....	4s, 1940
Sault Ste Marie & S. W. 1st Mtge.....	5s, 1915
Schenectady & Duaneburg 1st Mtge.....	6s, 1924
Seioto Valley & New England 1st Mtge.....	4s, 1939
Sioux City & Pacific 1st Mtge.....	3½s, 1936
Southern Iowa 1st Mtge.....	3½s, 1925
Southern Pacific Br. Ry. 1st Mtge.....	6s, 1937
Southern Pacific R. R. of Cal. 1st Cons.....	5s, 1937
Southern Pacific R. R. 1st and Ref.....	4s, 1955
Southwest Penn. 1st Mtge	7s, 1917
Spokane Falls & No. Ry. 1st Mtge.....	6s, 1939
Steubenville & Ind. 1st Mtge.....	5s, 1914
Sturgis, Goshen & St. L. 1st Mtge.....	3s, 1939
Sunbury & Lewiston 1st Mtge.....	4s, 1936
Sunbury, Hazelton & Wilkes-Barre 1st.....	5s, 1928
Syracuse, Phoenix & Osw. 1st Mtge.....	6s, 1915
Tarkio Valley 1st Mtge.....	7s, 1920
Terre Haute & Indianapolis Cons. Mtge.....	5s, 1925
Ticonderoga R. R. 1st Mtge.....	6s, 1921

Union Pacific R. R. Co. 1st Mtge.....	4s, 1947
Union Pac. R. R. Co. 1st & R. (due June).....	4s, 2008
United N. J. R. R. & Canal Co. Genl.....	4s, 1948
United N. J. R. R. & Canal Co. Genl.....	4s, 1923
United N. J. R. R. & Canal Co. Genl.....	4s, 1929
United N. J. R. R. & Canal Co. Genl.....	4s, 1944
United N. J. R. R. & Canal Co. Genl.....	3½s, 1951
Upper Coos R. R. Ext.....	4½s, 1930
Upper Coos R. R. 1st Mtge.....	4s, 1930
Utica & Black River 1st Mtge.....	4s, 1922
Utica, Clinton & Bing. 1st Mtge.....	5s, 1939
Vandalia Ry. Co. Cons. Mtge., Ser. A.....	4s, 1955
Vandalia Ry. Co. Cons. Mtge., Ser. B.....	4s, 1957
Warren R. R. 1st Ref. Mtge.....	3½s, 2000
West Chester R. R. 1st Mtge.....	5s, 1919
Western Penna. Cons. Mtge.....	4s, 1928
Wilmar & Sioux Falls Ry. 1st Mtge.....	5s, 1938
Winona & St. Peter Ext. 1st.....	7s, 1916
Wisconsin & Minn. 1st Mtge.....	5s, 1921
Wisconsin Northern 1st Mtge.....	4s, 1931
Wisconsin Valley 1st.....	6s, 1920

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ACQUIESCENCE BY BENEFICIARY IN UNAUTHORIZED INVESTMENTS. 5

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